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Rules and Regulations

Federal Register

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DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–CE–0014]

RIN 1904–AC23

Energy Conservation Program: Compliance Certification for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: This final rule provides a new means for manufacturers of electric motors and their private labelers to prepare and submit Compliance Certification information to the Department of Energy (DOE or the ''Department'') through an electronic Web-based tool, the Compliance and Certification Management System (CCMS). The CCMS is the preferred mechanism for submitting Compliance Certification information for electric motors covered under the Energy Policy and Conservation Act (EPCA), as amended. This rule is also being issued to correct the sample Compliance Certification form currently located in Appendix C to Subpart B of 10 CFR Part 431 to be consistent with the Energy Independence and Security Act of 2007 (EISA 2007) energy conservation standards. Additionally, this rule updates the address and contact information used to submit Compliance Certification information through certified mail to DOE.

DATES: *Effective date:* September 23, 2011.

ADDRESSES: For access to the docket and to read background material, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: 202–586–6590. E-mail: *Ashley.Armstrong@ee.doe.gov;* and Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: 202–287–6122. E-mail: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPCA establishes energy efficiency standards and test procedures for certain commercial and industrial equipment, including electric motors, 42 U.S.C. 6291 *et seq.,* and states in relevant part that, ''the Secretary [of Energy] shall require manufacturers to certify'' that each electric motor meets the applicable energy efficiency standards. (42 U.S.C. 6316(c)) To achieve this end, EPCA authorizes the Secretary to issue the necessary rules requiring each manufacturer or private labeler of covered electric motors to submit information and reports to ensure compliance. (42 U.S.C. 6316(a)) This directive is carried out under Section 431.36 of Title 10 of the Code of Federal Regulations (CFR), which requires that each manufacturer or private labeler, before distributing in commerce any basic model of an electric motor subject to the applicable energy conservation standard, certify by means of a Compliance Certification that each basic model(s) meets the applicable energy conservation standard.

Section 313(b)(1)(B) of EISA 2007 amended EPCA to require each National Electrical Manufacturers Association (NEMA) Design B, general purpose electric motor with a power rating of more than 200 horsepower, but not greater than 500 horsepower, manufactured (alone or as a component of another piece of equipment) after December 19, 2010, to have a nominal full load efficiency that is not less than the values in NEMA Standard MG–1 (2006) Table 12–11. (42 U.S.C. 6313(b)(2)(D)) DOE codified this requirement at 10 CFR 431.25(f). 74 FR 12058 (March 23, 2009). Appendix C to Subpart B of 10 CFR Part 431 provides a format for a manufacturer or private labeler to report the energy efficiency of its basic models of electric motors according to rated horsepower or kilowatts, number of poles, and open or enclosed construction.

II. Discussion

A. Submission of Compliance Certification Information

DOE establishes that Compliance Certification information for electric motors may be submitted to DOE through either of the following means: 1. Compliance and Certification Management System (CCMS)—via the Web portal: *https://www.regulations.doe.gov/ccms.* Follow the instructions on the CCMS Web site for submitting compliance statements and certification reports. The CCMS is a tool for certification of compliance with applicable energy conservation standards. Submission of Compliance Certification information via the CCMS is strongly encouraged and will satisfy DOE's compliance and certification reporting requirements for electric motors. 2. Certified Mail—send to: Certification and Compliance Reports, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Initially, the CCMS database will be used only as an alternative method for the submission of Compliance Certification information for electric motors, in addition to the current certified mail option. In a future rulemaking, DOE anticipates proposing to remove the certified mail option to make electronic submissions of Compliance Certification information through the CCMS the sole method of submission for electric motors. Such a requirement would be consistent with DOE's March 7, 2011 final rule titled ''Certification, Compliance and Enforcement for Consumer Products and Commercial and Industrial Equipment.'' 76 FR 12422. In that final rule, DOE noted its intent, where possible, to harmonize the certification provisions

for electric motors with the requirements for covered products and equipment under Part 429 of the CFR, which includes mandatory electronic submission. 76 FR 12447.

B. Sample Compliance Certification Form

In order to provide clarity to manufacturers, DOE is correcting the sample Compliance Certification form currently located in Appendix C to Subpart B of 10 CFR part 431 to be consistent with the EISA 2007 energy conservation standards. DOE's regulations, under 10 CFR 431.36(b), require manufacturers of electric motors to use the format in Appendix C to subpart B of 10 CFR part 431 for submitting Compliance Certification reports. As published, this Compliance Certification form does not allow manufacturers to identify the correct motor subtype and product class information that would allow DOE to determine whether a basic model is in compliance with the EISA 2007 standards. Consequently, today's final rule conforms the sample Compliance Certification form and table with the efficiency levels resulting from EISA 2007 by replacing the table with a revised table showing the additional subtypes and product classes of electric motors subject to the EISA 2007 standards.

III. Procedural Requirements

A. Executive Order 12866

Today's regulatory action is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Administrative Procedure Act

The Department finds good cause to waive notice and comment on these regulations pursuant to 5 U.S.C. 553(b)(3)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary and contrary to the public interest because this final rule does not require any new actions on the part of manufacturers, private labelers, or third-party representatives; rather it simply allows an alternative option for submission of information which is already required, and is otherwise technical in nature. A delay in effective date is unnecessary and contrary to the public interest for these same reasons. Therefore, these regulations are being published as final regulations and are effective immediately.

C. National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from further review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. This rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion A5 found in appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment, unless the agency certifies that the rule will have no significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov.* Because a notice of proposed rulemaking is not required under the Administrative Procedure Act or other applicable law, the Regulatory Flexibility Act does not require certification or the conduct of a regulatory flexibility analysis for this rule.

E. Paperwork Reduction Act

Manufacturers of electric motors must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for electric motors, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for electric motors. 10 CFR 431.36. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

G. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule

that may affect family well-being. Today's rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

H. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. DOE has examined this final rule and determined that it would not preempt State law and would have no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Executive Order 13132 requires no further action.

I. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

M. Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. This final rule to provide for use of the CCMS system for the submission of Compliance Certification information and correct the sample Compliance Certification form does not require the use of any commercial standards. Therefore, no consultation with either DOJ or FTC is required.

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on September 12, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, chapter II of title 10, Code of Federal Regulations, part 431 is amended to read as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: U.S.C. 6291–6317.

■ 2. Section 431.36 is amended by revising paragraph (d) to read as follows:

§ 431.36 Compliance Certification.

* * * * *

(d) *Signature and submission.* A manufacturer or private labeler must submit the Compliance Certification either on its own behalf, signed by a corporate official of the company, or through a third party (for example, a trade association or other authorized representative) acting on its behalf. Where a third party is used, the Compliance Certification must identify the official of the manufacturer or private labeler who authorized the third party to make representations on the company's behalf, and must be signed by a corporate official of the third party. The Compliance Certification must be submitted to the Department electronically at *https://www.regulations.doe.gov/ccms.* Alternatively, the Compliance Certification may be submitted by certified mail to: Certification and Compliance Reports, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

* * * * *

■ 3. Appendix C to subpart B of part 431 is revised to read as follows:

APPENDIX C TO SUBPART B OF PART 431—COMPLIANCE CERTIFICATION

Certification of Compliance With Energy Efficiency Standards for Electric Motors (Office of Management and Budget Control Number: 1910–1400. Expires February 13, 2014)

An electronic form is available at *https://www.regulations.doe.gov/ccms/.*

1. Name and Address of Company (the ''company''):

_____

_____

_____

_____

2. Name(s) to be Marked on Electric Motors to Which this Compliance Certification Applies:

_____

_____

_____

_____

3. If manufacturer or private labeler wishes to receive a unique Compliance Certification number for use with any particular brand name, trademark, or other label name, fill out the following two items:

A. List each brand name, trademark, or other label name for which the company requests a Compliance Certification number:

_____

_____

_____

B. List other name(s), if any, under which the company sells electric motors (if not listed in item 2 above):

_____

_____

_____

Submit electronically at *https://www.regulations.doe.gov/ccms.*

Submit paper form by Certified Mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies (EE–2J), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

This Compliance Certification reports on and certifies compliance with requirements contained in 10 CFR Part 431 (Energy Conservation Program for Certain Commercial and Industrial Equipment) and Part C of the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto. It is signed by a responsible official of the above named company. Attached and incorporated as part of this Compliance Certification is a Listing of Electric Motor Efficiencies. For each rating of electric motor* for which the Listing specifies the nominal full load efficiency of a basic model, the company distributes no less efficient basic model with that rating and all basic models with that rating comply with the applicable energy efficiency standard.

* For this purpose, the term ''rating'' means one of the combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, motor type, and open or enclosed construction, with respect to which § 431.25 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

Person to Contact for Further Information:

Name: _____

Address: _____

_____

_____

_____

Telephone Number: _____

Facsimile Number: _____

If any part of this Compliance Certification, including the Attachment, was prepared by a third party organization under the provisions of 10 CFR 431.36, the company official authorizing third party representations:

Name: _____

Address: _____

_____

_____

_____

Telephone Number: _____

Facsimile Number: _____

Third Party Organization Officially Acting as Representative:

Third Party Organization: _____

Responsible Person at the Organization: ____

_____

Address: _____

_____

_____

_____

Telephone Number: _____

Facsimile Number: _____

All required determinations on which this Compliance Certification is based were made in conformance with the applicable requirements in 10 CFR Part 431, subpart B. All information reported in this Compliance Certification is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Signature: _____

Date: _____

Name: _____

Title: _____

Firm or Organization: _____

Attachment of Certification of Compliance With Energy Efficiency Standards for Electric Motor Efficiencies

Date: _____

Name of Company: _____

Motor Type (i.e., general purpose electric motor (subtype I), fire pump electric motor, general purpose electric motor (subtype II), NEMA Design B general purpose electric motor)

_____

Motor horsepower/standard kilowatt equivalent	Least efficient basic model—(model numbers(s)) Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2
1/.75								
1.5/1.1								
2/1.5								
3/2.2								
5/3.7								
Etc								

Note: Place an asterisk beside each reported nominal full load efficiency that is determined by actual testing rather than by application of an alternative efficiency determination method. Also list below additional basic models that were subjected to actual testing.

Basic Model means all units of a given type of electric motor (or class thereof) manufactured by a single manufacturer, and which (i) have the same rating, (ii) have electrical design characteristics that are essentially identical, and (iii) do not have any differing physical or functional characteristics that affect energy consumption or efficiency.

Rating means one of the combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, motor type, and open or enclosed construction, with respect to which § 431.25 of 10 CFR Part 431 prescribes nominal full load efficiency standards.

Motor horsepower/standard kilowatt equivalent	Least efficient basic model—(model numbers(s)) Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2

Motor horsepower/standard kilowatt equivalent	Least efficient basic model—(model numbers(s)) Nominal full-load efficiency							
	Open motors (number of poles)				Enclosed motors (number of poles)			
	8	6	4	2	8	6	4	2
Etc								

[FR Doc. 2011–24500 Filed 9–22–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0647; Directorate Identifier 2010–NM–193–AD; Amendment 39–16812; AD 2011–20–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes) and A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Surface defects were visually detected on the rudder of an A319 and an A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were as a result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A310 and A300–600 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 28, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 28, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 29, 2011 (76 FR 38069). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Surface defects were visually detected on the rudder of an A319 and an A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were as a result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A310 and A300–600 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

To address this unsafe condition, EASA issued AD 2010–0002 [which corresponds to FAA AD 2010–16–13, Amendment 39–16390 (75 FR 49370, August 13, 2010)], superseding [EASA] AD 2009–0166, to require inspections of specific areas and, depending on findings, the application of corrective actions for those rudders where production reworks have been identified.

This new [EASA] AD addresses the rudder population that has also been reworked in production but not included in the applicability of EASA AD 2010–0002.

The required actions, for certain rudders, include vacuum loss inspections and elasticity laminate checker inspections for defects including de-bonding between the skin and honeycomb core of the rudder. The corrective action is contacting the FAA or EASA for repair instructions if any defects are found. For certain other rudders, the required actions include replacing the rudder with a serviceable rudder. We are considering similar rulemaking action on Model A319 and A321 airplanes. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 38069, June 29, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 215 products of U.S. registry. We also estimate that it will take about 4 work-

hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $73,100, or $340 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 38069, June 29, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–20–03 Airbus: Amendment 39–16812. Docket No. FAA–2011–0647; Directorate Identifier 2010–NM–193–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category; equipped with carbon fiber reinforced plastic rudders having any part number and serial number listed in table 1, 2, 3, or 4 of this AD.

TABLE 1—RUDDER INFORMATION

Rudder part No.	Affected rudder serial No.
A554–71710–000–00	TS–2010
A554–71710–000–00	TS–2027
A554–71710–000–00	TS–2030
A554–71710–002–00	TS–2043
A554–71710–004–00	TS–2048

TABLE 2—RUDDER INFORMATION

Rudder part No.	Affected rudder serial No.
MSN-scrapped	TS–1362
A554–71710–000–00	TS–2006
A554–71710–000–00	TS–2008
A554–71710–002–00	TS–2033
A554–71710–004–00	TS–2054
A554–71710–004–00	TS–2061

TABLE 2—RUDDER INFORMATION—Continued

Rudder part No.	Affected rudder serial No.
A554–71710–004–00	TS–2071
A554–71710–004–00	TS–2072
A554–71710–004–00	TS–2073
A554–71730–000–00–0000	TS–2082
A554–71730–000–00–0000	TS–2084
A554–71730–000–00–0000	TS–2085
A554–71730–000–00–0000	TS–2086
A554–71730–000–00–0000	TS–2087

TABLE 3—RUDDER INFORMATION

Rudder part No.	Affected rudder serial No.
A554–71500–016–30	HF–1254
A554–71710–004–00	TS–2049
A554–71710–004–00	TS–2055
A554–71710–004–00	TS–2059

TABLE 4—RUDDER INFORMATION

Rudder part No.	Affected rudder serial No.
A554–71500–016–91	HF–1044
A554–71500–014–00	HF–1116
A554–71500–016–00	HF–1183
A554–71500–016–00	HF–1184
A554–71500–026–00	TS–1402

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Surface defects were visually detected on the rudder of an A319 and an A321 in-service aeroplane. Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were as a result of de-bonding between the skin and honeycomb core. Such reworks were also performed on some rudders fitted on A310 and A300–600 aeroplanes.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections and Corrective Actions for Rudders Identified in Tables 1, 2, and 3

(g) For rudders identified in table 1 or table 2 of this AD: Do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, and paragraphs (g)(3) and (g)(4) of this AD, at the time specified. Do the actions in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010.

(1) For rudders identified in table 1 of this AD: Within 8 months after the effective date of this AD, perform a vacuum loss inspection in the ''area 1'' location defined in Airbus Mandatory Service Bulletin A310–55–2049 or A300–55–6048, both dated March 16, 2010, as applicable, to detect defects, including de-bonding.

(2) For rudders identified in table 2 of this AD: Within 24 months after the effective date of this AD, perform a vacuum loss inspection in the ''area 1'' location defined in Airbus Mandatory Service Bulletin A310–55–2049 or A300–55–6048, both dated March 16, 2010, as applicable, to detect defects, including de-bonding.

(3) Within 24 months after the effective date of this AD: Do an elasticity laminate checker inspection to detect defects, including de-bonding, in the trailing edge location.

(4) Repeat the inspection required by paragraph (g)(3) of this AD two times at intervals not to exceed 4,500 flight cycles, but not fewer than 4,000 flight cycles from the most recent inspection.

(h) For rudders identified in table 3 of this AD: Do the actions specified in paragraphs (h)(1) and (h)(2) of this AD at the time specified. Do the actions in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010.

(1) Within 4,500 flight cycles after the effective date of this AD, but not fewer than 4,000 flight cycles from the most recent elasticity laminate checker inspection: Do an elasticity laminate checker inspection to detect defects, including de-bonding, in the trailing edge location.

(2) Repeat the inspection required by paragraph (h)(1) of this AD one time within 4,500 flight cycles, but not fewer than 4,000 flight cycles from the last inspection.

(i) If any defect is found during any inspection required by paragraphs (g) and (h) of this AD, before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent).

(j) If no defect is found during the inspections required by paragraphs (g)(1) and (g)(2) of this AD, before further flight, restore the vacuum loss holes with the temporary restoration with self adhesive tape, temporary restoration with resin, or permanent restoration with resin and surface protection. Do the applicable actions specified in paragraph (j)(1) or (j)(2) of this AD.

(1) For airplanes on which a temporary restoration with self-adhesive disks or tapes is done, within 4 months after doing the restoration, do a detailed inspection for loose or missing self-adhesive disks or tapes and repeat the inspection thereafter at intervals not to exceed 4 months until the permanent restoration is done, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010. If any loose or missing self-adhesive disks or tapes are found during any inspection required by this AD, before further flight, close the holes, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 or A300–55–6048, both dated March 16, 2010, as applicable. Do the permanent restoration within 4,500 flight cycles after doing the temporary restoration, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 or A300–55–6048, both dated March 16, 2010, as applicable.

(2) For airplanes on which a temporary restoration with resin is done: Within 4,500 flight cycles after doing the temporary restoration do the permanent restoration, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010.

Reporting

(k) At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD: Report the results of each inspection required by paragraphs (g) and (h) of this AD, including no findings, to Airbus, as specified in Airbus Mandatory Service Bulletin A310–55–2049 (for Model A310 series airplanes) or A300–55–6048 (for Model A300–600 series airplanes), both dated March 16, 2010.

(1) Inspections done before the effective date of this AD: Within 30 days after the effective date of this AD.

(2) Inspections done on or after the effective date of this AD: Within 30 days after accomplishment of the inspection.

Replacement for Rudders Identified in Table 4

(l) For rudders identified in table 4 of this AD: Within 8 months after the effective date of this AD, replace the affected rudder with a serviceable unit, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the EASA (or its delegated agent).

Parts Installation

(m) As of the effective date of this AD, no person may install any rudder identified in table 1, 2, or 3 of this AD on any airplane, unless the rudder has been inspected and all applicable corrective actions have been done in accordance with paragraphs (g), (h), and (i) of this AD, as applicable.

(n) As of the effective date of this AD, no person may install any rudder identified in table 4 of this AD on any airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(o) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(p) Refer to MCAI EASA Airworthiness Directive 2010–0144, dated July 16, 2010; and Airbus Mandatory Service Bulletins A310–55–2049 and A300–55–6048, both dated March 16, 2010; for related information.

Material Incorporated by Reference

(q) You must use Airbus Mandatory Service Bulletin A310–55–2049, dated March

16, 2010; or Airbus Mandatory Service Bulletin A300–55–6048, dated March 16, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington on September 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–24203 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0569; Directorate Identifier 2010–NM–240–AD; Amendment 39–16811; AD 2011–20–02]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

BAE Systems have received reports of in-service failure of the Main Landing Gear (MLG) shock absorber lower attachment pin.

* * * * *

This condition, if not detected and corrected, could lead to a MLG collapse on the ground or during landing and consequently damage to the aeroplane or injury to the occupants.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 28, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 28, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 22, 2011 (76 FR 36398). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

BAE Systems have received reports of in-service failure of the Main Landing Gear (MLG) shock absorber lower attachment pin.

Investigation has shown that the pin failures were due to corrosion.

This condition, if not detected and corrected, could lead to a MLG collapse on the ground or during landing and consequently damage to the aeroplane or injury to the occupants.

For the reasons described above, this AD requires repetitive [general visual] inspections [for damage (cracking, corrosion, and exposed material)] of the MLG shock absorber lower attachment pins and replacement, depending on findings.

The replacement, if damage is found, consists of installing serviceable pins. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 36398, June 22, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 1 product of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $14,000, for a cost of $14,170 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 36398, June 22, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–20–02 BAE Systems (Operations) Limited: Amendment 39–16811. Docket No. FAA–2011–0569; Directorate Identifier 2010–NM–240–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

BAE Systems have received reports of in-service failure of the Main Landing Gear (MLG) shock absorber lower attachment pin.

* * * * *

This condition, if not detected and corrected, could lead to a MLG collapse on the ground or during landing and consequently damage to the aeroplane or injury to the occupants.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections

(g) Within 4,000 flights cycles or 2 years after the effective date of this AD, whichever occurs first: Do the initial inspection of the MLG shock absorber lower attachment pins in accordance with paragraph 2.C of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.32–176, initial issue, dated November 12, 2009; and paragraph 3 of Messier-Dowty Service Bulletin 146–32–157, excluding Appendix A, dated February 12, 2009.

(h) Thereafter, at intervals not to exceed 8,000 flights cycles or 4 years, whichever occurs first, repeat the inspection required by paragraph (g) of this AD.

Corrective Action

(i) If, during any inspection required by paragraphs (g) and (h) of this AD, the chromium plating on the outer diameter of any pin is found cracked, or the base material is exposed, or any corrosion is found on the chromium plating on the outer diameter of any pin, before further flight, replace the pin with a serviceable pin in accordance with paragraph 2.C of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.32–176, initial issue, dated November 12, 2009; and paragraph 3 of Messier-Dowty Service Bulletin 146–32–157, excluding Appendix A, dated February 12, 2009.

(j) Replacing the pin, as required by paragraph (i) of this AD, does not constitute a terminating action for the repetitive inspections required by paragraph (h) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(l) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0201, dated October 5, 2010; BAE Systems (Operations) Limited Inspection Service Bulletin ISB.32–176, initial issue, dated November 12, 2009; and Messier-Dowty Service Bulletin 146–32–157, excluding Appendix A, dated February 12, 2009; for related information.

Material Incorporated by Reference

(m) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.32–176, initial issue, dated November 12, 2009; and Messier-Dowty Service Bulletin 146–32–157, excluding Appendix A, dated February 12, 2009; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For BAE Systems (Operations) Limited service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; e-mail *RApublications@baesystems.com*; Internet

http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.

(3) For Messier-Dowty service information identified in this AD, contact Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, Virginia 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet *https://techpubs.services/messier-dowty.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington on September 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–24202 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0821; Directorate Identifier 2010–NE–30–AD; Amendment 39–16657; AD 2011–08–07]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to RR RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 turbofan engines. The compliance instructions in the regulatory section paragraphs (e)(3) and (e)(5) are partially correct and do not fully meet our original intent. This document corrects those errors. In all other respects, the original document remains the same.

DATES: The effective date for AD 2011–08–07 remains June 7, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7143; fax: 781–238–7199; e-mail: *alan.strom@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2011–08–07, Amendment 39–16657 (76 FR 24798, May 3, 2011), currently requires initial and repetitive ultrasonic inspections of the affected low-pressure compressor blades, identified by serial number.

As published, paragraph (e)(3) in the regulatory section inadvertently referenced RR Alert Service Bulletin (SB) No. RB.211–72–AG244, Revision 1, dated January 26, 2010, for performing the ultrasonic inspections of blades, without differentiating between blades removed or blades installed. Also as published, paragraph (e)(5) in the regulatory section inadvertently left out that it applies only to blades that were removed. This document corrects those errors.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains June 7, 2011.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of May 3, 2011, on page 24801, in the first column, paragraph (e)(3) of AD 2011–08–07 is corrected to read as follows:

(3) For blades that are:

(i) Removed from the engine, use paragraphs 3.A.(1) through 3.A.(2) of Accomplishment Instructions of RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010, and paragraphs 1 through 3.B. of Appendix 1 of that ASB, to perform the UIs.

(ii) Not removed from the engine, use paragraphs 3.B.(1) through 3.B.(3) of Accomplishment Instructions of RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010, and paragraphs 1 through 3.C. of Appendix 2 of that ASB, to perform the UIs.

In the **Federal Register** of May 3, 2011, on page 24801, in the second column, paragraph (e)(5) of AD 2011–08–07 is corrected to read as follows:

(5) For blades that are removed from the engine and pass inspection, re-apply dry film lubricant, and install all blades in their original position.

Issued in Burlington, Massachusetts on September 9, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–24282 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0243; Airspace Docket No. 11–ANE–12]

Amendment of Class E Airspace; Burlington, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace areas at Burlington, VT, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures developed for Burlington International Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. This action also makes a minor adjustment to the geographic coordinates of the airport and recognizes the name change of the Burlington VOR/DME.

DATES: Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On July 1, 2011, the FAA published in the Federal Register a notice of proposed rulemaking to amend Class E

airspace at Burlington, VT (76 FR 38584) Docket No. FAA–2011–0243. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that the Burlington VORTAC is now recognized as the Burlington VOR/DME. This rule notes the change. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace areas at Burlington, VT, to support new Standard Instrument Approach Procedures at Burlington International Airport. The existing Class E surface area airspace and Class E airspace designated as an extension are being modified for the safety and management of IFR operations at the airport. The geographic coordinates for Burlington International Airport in all Class E airspace areas are being adjusted to be in concert with the FAAs aeronautical database. This action also changes the name of the navigation aid from Burlington VORTAC to Burlington VOR/DME. This action enhances the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Burlington International Airport, Burlington, VT.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANE VT E2 Burlington, VT [Amended]

Burlington International Airport, VT
(Lat. 44°28′19″ N., long. 73°09′12″ W.)
Burlington, VOR/DME
(Lat. 44°23′50″ N., long. 73°10′57″ W.)

That airspace extending upward from the surface within a 5-mile radius of Burlington International Airport, and within 2.4 miles each side of the Burlington VOR/DME 201° radial extending from the 5-mile radius of the airport to 7 miles southwest of the Burlington VOR/DME, and within 1.8 miles each side of the Burlington International Airport 302° bearing extending from the 5-mile radius of the airport to 5.4 miles northwest of the airport, and within 4 miles each side of the Burlington International Airport 131° bearing extending from the 5-mile radius to 16 miles southeast of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6003 Class E airspace areas designated as an extension.

* * * * *

ANE VT E3 Burlington, VT [Amended]

Burlington International Airport, VT
(Lat. 44°28′19″ N., long. 73°09′12″ W.)
Burlington, VOR/DME
(Lat. 44°23′50″ N., long. 73°10′57″ W.)

That airspace extending upward from the surface within 2.4 miles on each side of the Burlington VOR/DME 201° radial extending from a 5-mile radius of the airport to 7 miles southwest of the Burlington VOR/DME, and within 1.8 miles each side of the Burlington International Airport 302° bearing extending from the 5-mile radius of the airport to 5.4 miles northwest of the airport and within 4 miles each side of the Burlington International Airport 131° bearing extending from the 5-mile radius of the airport to 16 miles southeast of the airport.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANE VT E5 Burlington, VT [Amended]

Burlington International Airport, VT
(Lat. 44°28′19″ N., long. 73°09′12″ W.)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of Burlington International Airport; excluding that airspace within the Plattsburgh, NY, Class E airspace area.

Issued in College Park, Georgia, on August 29, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–24349 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1632

[CPSC Docket No. CPSC–2010–0105]

Standard for the Flammability of Mattresses and Mattress Pads; Technical Amendment

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') is amending its standard for the flammability of mattresses and mattress pads to revise the ignition source specification in that standard.[1]

[1] The Commission voted 5–0 to approve publication of this final rule. Commissioner Nancy

The ignition source cigarette specified for use in the mattress standard's performance tests is no longer produced. The Commission is requiring a standard reference material cigarette, which was developed by the National Institute of Standards and Technology, as the ignition source for testing to the mattress standard.

DATES: The rule will become effective on September 23, 2012.

FOR FURTHER INFORMATION CONTACT: Allyson Tenney, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408; telephone (301) 504–7567; *atenney@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Current Standard and the Need To Change the Ignition Source

The Standard for the Flammability of Mattresses and Mattress Pads (''the Standard''), 16 CFR part 1632, was initially issued by the U.S. Department of Commerce in 1972 under the authority of the Flammable Fabrics Act (''FFA''), 15 U.S.C. 1191 *et seq.* When the Consumer Product Safety Act (''CPSA'') created the Consumer Product Safety Commission, it transferred to the Commission the authority to issue flammability standards under the FFA.

The Standard sets forth a test to determine the ignition resistance of a mattress or mattress pad when exposed to a lighted cigarette. Lighted cigarettes are placed at specified locations on the surface of a mattress (or mattress pad). The Standard establishes pass/fail criteria for the tests. Currently, the Standard specifies the ignition source for these tests by its physical properties. These properties were originally selected to represent an unfiltered Pall Mall cigarette, which was identified as the most severe smoldering ignition source.

In January 2008, we learned that the R.J. Reynolds Tobacco Company planned to stop producing unfiltered Pall Mall cigarettes (although it would continue to make a reduced ignition propensity or ''RIP'' version). CPSC staff, mattress manufacturers, and testing organizations were concerned about testing to the Standard if the specified ignition source cigarettes were unavailable. Under an Interagency Agreement (''IAG'') with the CPSC, the National Institute of Standards and Technology (''NIST'') developed a standard reference material (''SRM'') cigarette that could be used as the ignition source in the Standard.

2. NIST's Research

Currently, the Standard requires that the ignition source for testing mattresses ''shall be cigarettes without filter tips made from natural tobacco, 85 ± 2 mm long with a tobacco packing density of 0.270 ± 0.02 g/cm^3 and a total weight of 1.1 ± 0.1 g.'' 16 CFR 1632.4(a)(2). This specification was intended to describe a conventional unfiltered Pall Mall cigarette that was available when the Standard was developed. According to research conducted by NIST's predecessor, the National Bureau of Standards, in the 1970s, this specification was chosen in order to replicate the most severe smoldering ignition source for testing mattresses and mattress pads. (*See* Loftus, Joseph J., ''Results of Temperature Measurements Made on Burning Cigarettes and Their Use as a Standard Ignition Source for Mattress Testing,'' NBS Memo Report, National Bureau of Standards, June 18, 1971: and Loftus, Joseph J., ''Back-Up Report for the Proposed Standard for the Flammability (Cigarette Ignition Resistance) of Upholstered Furniture,'' PFF 6–76, NBSIR 78–1438, National Bureau of Standards, Gaithersburg, MD, June 1978.)

In January 2008, when we learned that R.J. Reynolds intended to stop producing the unfiltered Pall Mall cigarettes, we sought an alternate ignition source that would have the same burning characteristics as the ignition source specified in the Standard. Our intention has been to find a replacement ignition source that would replicate the level of safety of the ignition source specified in the Standard and would provide consistency in testing. Under this approach, the Standard would maintain the same level of safety, neither more nor less stringent. In August 2008, we entered into an IAG with NIST to develop a new cigarette ignition source SRM that would fit these parameters.

There are no cigarette ignition test data to characterize the ignition propensity of cigarettes from 1972, when the Standard was promulgated. In the absence of such data, and consistent with the intent of the original Standard, NIST sought to identify the highest ignition strength cigarette. NIST evaluated Pall Mall cigarettes of different vintages (1992 through 2008) to determine the ignition strengths of the cigarettes that had been used to test soft furnishings, such as mattresses. The NIST research strongly indicated that the SRM is equivalent in ignition strength to the previous highest known strength unfiltered Pall Mall cigarette.

In June 2009, NIST provided us with a report on its research, ''*NIST Technical Note 1627: Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes*'' (Ref. 1). We used NIST's research as the basis to establish specific parameters for a new ignition source to be specified in the Standard.

After developing a standard procedure for determining the ignition strength of cigarettes and assessing different vintage cigarettes, NIST recommended that the new SRM cigarette meet the following specification:

- Nominal length: 83 mm ± 2mm;
- Tobacco packing density: 0.270 g/cm^3 ± 0.020g/cm^3;
- Mass: 1.1 g ± 0.1 g;
- Ignition Strength: 70 Percent Full Length Burn (PFLB) to 95 PFLB using ASTM E 2187, as modified in Section 4.2 of NIST Technical Note 1627; and
- Non-''Fire-Safe Cigarette'' (FSC)

The first three descriptors are consistent with the physical requirements listed in the Standard for the ignition source. The recommended ignition strength range reflects the three oldest vintages of the Pall Mall cigarette tested by NIST. These vintages reflect the intent of the Standard to represent a worst-case ignition source.

B. Statutory Provisions

The FFA sets forth the process by which we can issue or amend a flammability standard. In accordance with those provisions, we are revising the ignition source specification in the Standard to require that the SRM cigarette developed by NIST be used as the ignition source for testing under the Standard. As required by the FFA, we published a proposed rule containing the text of the ignition source revision, alternatives considered, and a preliminary regulatory analysis. 15 U.S.C. 1193(i). 75 FR 67047 (Nov. 1, 2010). To issue a final rule, the Commission must prepare a final regulatory analysis and make certain findings concerning any relevant voluntary standard, the relationship of costs and benefits of the rule (in this case, the ignition source revision), and the burden imposed by the rule. *Id.* 1193(j). In addition, the Commission must find that the rule: (1) Is needed to adequately protect the public against the risk of the occurrence of fire leading to death, injury, or significant property damage; (2) is reasonable,

A. Nord filed a statement concerning this action which may be viewed on the Commission's Web site at *http://www.cpsc.gov/pr/nord09132011.pdf* or obtained from the Commission's Office of the Secretary.

technologically practicable, and appropriate; (3) is limited to fabrics, related materials, or products which present unreasonable risks; and (4) is stated in objective terms. *Id.* 1193(b).

The Commission also must provide an opportunity for interested persons to make an oral presentation concerning the rulemaking before the Commission may issue a final rule. *Id.* 1193(d). In the preamble to the proposed rule (75 FR at 67048), we requested that anyone who wanted to make an oral presentation concerning this rulemaking contact the Commission's Office of the Secretary within 45 days of publication of this notice. We did not receive any requests to make an oral presentation.

C. Response to Comments on the Proposed Rule

We published a notice of proposed rulemaking in the **Federal Register** on November 1, 2010. 75 FR 67047. We received five comments in response to the proposal. Two comments were from industry trade associations: the International Sleep Products Association (''ISPA'') and the National Textile Association (''NTA''). Two comments were from individuals, and one comment was from the National Association of State Fire Marshals (''NASFM'').

A summary of each of the commenter's topics is presented, and each topic is followed by our response. For ease of reading, each topic will be prefaced with a numbered ''Comment''; and each response will be prefaced by a corresponding numbered ''Response.'' Each ''Comment'' is numbered to help distinguish between different topics. The number assigned to each comment is for organizational purposes only and does not signify the comment's value or importance or the order in which it was received. Comments on similar topics are grouped together.

1. The Use of SRM 1196

(Comment 1) One commenter agreed that we should specify SRM 1196 and maintain the level of safety established by the original Standard, noting that ''lowering the strength of the ignition source would be tantamount to a policy decision by CPSC to make the standard less effective, as it would reduce the level of resistance to smoldering ignition sources currently required of mattresses and mattress pads.''

(Response 1) We agree that it is appropriate to specify SRM 1196 as the new ignition source for 16 CFR part 1632. Incorporation of this SRM would be ''safety-neutral'' and would not affect the stringency of the Standard.

(Comment 2) Two commenters stated that we should consider the 2007–08 non-RIP Pall Mall as the target for a ''safety neutral'' SRM cigarette because in NIST testing, it exhibited a 30 percent to 50 percent full-length burn (PFLB). They argued that we are effectively increasing the stringency of the Standard by using an SRM cigarette with a 90 percent PFLB.

(Response 2) The use of SRM 1196, which mimics the highest PFLB measured by NIST among commercial cigarettes (the 1992 Pall Mall), does not alter the intent of the Standard; rather, SRM usage ensures continuity of a reliably high PFLB with low variability in the ignition source. This approach is consistent with the intent of the Standard, and it means that the level of safety that the Standard has provided over the years will remain the same.

The consistently high PFLB of SRM 1196 (70 percent to 90 percent PFLB) is key to successful completion of the test to determine compliance with the Standard. To test the smoldering ignition of mattresses and mattress pads under 16 CFR part 1632, cigarettes are expected to burn their entire length. If a cigarette self-extinguishes during testing, it must be replaced with a cigarette in another location of the same type of construction feature. Tests using lower PFLB cigarettes would yield misleading results that do not reflect the performance of the mattress being tested. Further, using an SRM cigarette with a lower PFLB, such as the 2007–08 non-RIP Pall Mall, to meet the testing requirements of 16 CFR part 1632, would require using more cigarettes to complete the test, to the extent that self-extinguishing cigarettes would need to be replaced during the test. In some cases, it may be impossible to complete a test if the cigarettes self-extinguish consistently.

(Comment 3) Three commenters stated that we should allow unfiltered RIP Pall Malls or other lower heat-producing cigarettes that are commercially available on the market to be used for testing to 16 CFR part 1632.

(Response 3) The Standard does not require that a commercial cigarette be used; however, cigarettes that burn their full length are needed to complete the test. In 1972, the unfiltered, 85 mm Pall Mall was identified as the most severe ignition source among commercial cigarettes. SRM cigarettes, which are designed to exhibit consistent burning behavior, did not exist at that time. NIST's research demonstrates that the PFLB performance of commercial cigarettes is subject to significant variability that can lead to inconsistent test results. The use of SRM 1196, which mimics the highest PFLB measured by NIST among commercial cigarettes (the 1992 Pall Mall), does not alter the intent of the Standard; rather, SRM usage ensures continuity of a reliable ignition source with a high enough PFLB to allow for completion of the test.

(Comment 4) One commenter suggested that we had insufficient information to reject another existing SRM cigarette—NIST SRM 1082—(which is a RIP cigarette) as the ignition source in the Standard. The commenter argued that we should allow NIST SRM 1082 to be used in 16 CFR part 1632 instead of SRM 1196.

(Response 4) The purpose of specifying an SRM cigarette, which has been certified by NIST to meet specifications, is to enhance repeatability of smoldering ignition test results without changing the level of fire safety provided by the Standard.

State laws requiring ''fire safe'' cigarettes stipulate that such cigarettes meet an established cigarette fire safety performance standard, based on ASTM E2187, *Standard Test Method for Measuring the Ignition Strength of Cigarettes.* NIST SRM 1082 has a 12.6 ± 3.3 percent PFLB and is intended for use by test laboratories to assess and control their test method and apparatus to evaluate cigarette ignition propensity of RIP cigarettes in accordance with ASTM E2187.

A cigarette with a low PFLB, like SRM 1082, would yield fewer successfully completed tests for purposes of part 1632, resulting in the use of more cigarettes to complete the test to determine compliance with the Standard. In addition, use of SRM 1082 would not represent a severe cigarette ignition source, and as such, would not be consistent with the original Standard.

(Comment 5) One commenter suggested that we move ahead with development of a surrogate smoldering ignition source that is not a cigarette.

(Response 5) SRM 1196 is a short-term solution to a longer-term issue. Anticipating the need for a longer-term solution, we have entered into a new Interagency Agreement with NIST to develop a surrogate ignition source. This project began in FY 2010.

(Comment 6) One commenter stated that SRM 1196 is an inappropriate ignition source for upholstery fabric.

(Response 6) This regulatory proceeding pertains only to 16 CFR part 1632, *Standard for the Flammability of Mattresses and Mattress Pads.* It does not apply to the Commission's upholstered furniture rulemaking (73 FR 11702 (March 4, 2008)).

2. The Effectiveness of Reduced Ignition Propensity (RIP) Cigarettes

(Comment 7) Two commenters asserted that we did not properly consider the potential of RIP cigarettes in reducing cigarette-ignited fires.

(Response 7) We are very interested in evaluating the potential of RIP cigarettes to reduce cigarette-ignited fires when mattresses and mattress pads are the first item ignited. In FY 2007, we began work on a Cigarette Ignition Risk (CIR) project. The goal of the CIR project is to evaluate the change in the cigarette-ignited fire hazard presented by RIP cigarettes. This project was deferred in FY 2009 and FY 2010, due to resource constraints. We resumed the study in FY 2011. Results from the CIR study may inform the agency's development of a surrogate ignition source.

Although RIP cigarettes are designed to self-extinguish if left unattended, claims that RIP cigarettes actually reduce cigarette-ignited fires have not been substantiated by empirical state or national data. We have begun investigating the effect of RIP cigarettes but have no test data or epidemiological evidence demonstrating that RIP cigarettes decrease the number of reported incidences of smoldering ignitions of mattresses or mattress pads. We are not aware of any published studies on the effectiveness of RIP cigarettes that included testing of RIP and non-RIP cigarettes on commercially available mattresses, mattress pads, or mattress mock-ups. If the mattress industry has sufficient test data to support the hypothesis that RIP cigarettes consistently self-extinguish on 16 CFR part 1632- and part 1633-compliant mattresses, we would welcome the opportunity to review that information.

All 50 states and Canada have adopted pass/fail criteria that will allow no more than 25 percent of 40 tested cigarettes to burn their full length when tested in accordance with ASTM E2187; this means that 10 out of every 40 tested RIP cigarettes are allowed to burn their full length (*i.e.,* not self-extinguish). Although this does not mean that 25 percent of commercial RIP cigarettes would be expected to fail the test, it suggests that zero PFLB is unlikely. The ''worst-case'' RIP cigarette would be one that burns its full length exactly like a non-RIP cigarette. Further, commercial RIP cigarettes could exhibit the same variability as observed among non-RIP cigarettes, thereby reducing reliability of test results.

(Comment 8) One commenter noted that the report from the National Fire Protection Association (''NFPA''), ''The Smoking Material Fire Problem'' (Hall, J.R. *The Smoking Material Fire Problem,* National Fire Protection Association. Sept. 2010. *http://www.nfpa.org*) stated that RIP cigarettes have the potential to reduce deaths and injuries from cigarette-caused fires by 56 to 77 percent, compared to 2003 levels. The commenter noted that this was not accounted for in the proposed rule.

(Response 8) The NFPA estimate is preliminary and will likely change when 2010 data are available. The NFPA report cited estimates that when fully effective, the RIP cigarette laws should result in a 56 percent to 77 percent reduction in smoking material fire deaths relative to 2003. NFPA produced this estimated range by comparing the National Fire Incident Reporting System (''NFIR'') smoking material fire deaths estimate from 2003 (the last full year before the first state implemented a RIP cigarette law), to the estimate for 2008 (which is the most recent year for which it has estimates). NFPA's estimate incorporates a factor to adjust for the fact that only an estimated 21 percent to 29 percent of the population was under the RIP cigarette law in 2008. This method adjustment adds uncertainty to the estimate. Measuring the reduction in fire losses from 2003 to 2010 is more appropriate because in 2010, virtually 100 percent of the population was effectively covered by the law, and no mathematical projection would be necessary. Commission staff will use the 2010 estimate when it becomes available.

3. The Cost of SRM 1196

(Comment 9) Two commenters stated that specifying SRM 1196 as the new ignition source is not a modest change, and it may result in significant substantive changes to 16 CFR part 1632 that could impose major new costs on mattress manufacturers.

(Response 9) The purpose of SRM 1196 is to enhance repeatability and reproducibility of test results, without changing the level of fire safety. Since the time we issued the proposal, NIST has reduced the price of SRM 1196 from $239 for one carton to $239 for two cartons, and this price reduction should help alleviate some cost concerns. The total estimated annual cost of the technical amendment is approximately $24,000, or less than one cent per mattress produced under those tests. This does not represent a significant new cost to manufacturers. A discussion of the costs and benefits is found in the Directorate for Economic Analysis Report: *Final Regulatory Analysis: Smoldering Ignition Source Draft Proposed Technical Amendment to the Flammability Standard for Mattresses and Mattress Pads* (16 CFR part 1632).

(Comment 10) One commenter noted that the testing and certification requirements of the Consumer Product Safety Improvement Act (CPSIA) would impose additional testing cost burdens on mattress manufacturers and that these additional CPSIA burdens would compound any cost increase related to revising the ignition source provision in the Standard.

(Response 10) Although the CPSIA may impose testing and certification costs on industry, both related and unrelated to the Standard, the revision to the ignition source provision would have a negligible effect on such costs. The revision will increase aggregate estimated testing costs by about 3.5 percent, or about $24,000 per year; average increased testing costs for individual firms would range from about $45 to $162 per year. This assumes that testing would be performed largely by third party laboratories, as required under the CPSIA for regulated children's products only.

(Comment 11) Three commenters expressed concern that mattress manufacturers would incur unwarranted or excessive production costs. One commenter indicated that revising the ignition source provision could impose ''major new costs'' on firms whose products previously complied but had to be redesigned to pass the Standard when tested with SRM 1196.

(Response 11) Because the revision to the ignition source provision is intended to be ''safety neutral,'' it would likely have no effect on the pass/fail performance of articles subject to the Standard. Design and production costs would increase only if mattresses previously thought to comply failed the test with SRM cigarettes. There is no evidence from CPSC experience or data provided by industry that this would result, so long as the tests were conducted correctly with cigarettes that burn their full length. The approximately $24,000 aggregate annual testing cost of the SRM cigarettes represents a small increase in total testing costs, ranging from about one-third to one cent per mattress produced under those tests.

(Comment 12) One commenter suggested that under a 90 PFLB SRM, manufacturers would incur costs in order to produce mattresses that complied with tests using 100 PFLB cigarettes, so that the finished products would incorporate a reasonable ''margin of safety'' beyond the minimum requirements of the Standard. The

commenter stated that this was analogous to doubling the flame exposure time in the 16 CFR part 1633 open-flame test from 30 to 60 minutes.

(Response 12) Specifying SRM 1196 as the ignition source would more likely have the opposite result; that is, a more repeatable ignition source in the test should improve the reliability of the test results and lessen the need for manufacturers to build in a ''margin of safety'' to account for test variability. The commenter may be confusing the relationship between test material specifications and the stringency of the Standard itself. The ''margin of safety'' built into the production of mattresses ordinarily would be related to the performance requirements prescribed in the Standard for tested mattress samples. If, however, test results were unreliable due to the variability of the test cigarettes, manufacturers might build mattresses that, for example, pass the test in more than the minimum number of locations or that exhibit shorter-than-required char length results. The SRM cigarette ignition source increases the likelihood of a successful test and enhances the repeatability of test results, and it decreases the number of retests necessary to determine compliance. A test cigarette that burns its full length would be acceptable for the test, whether it was a 90 PFLB SRM or a 50 PFLB SRM cigarette. Differences in the PFLB of test cigarettes are independent of the performance requirements of either of the two mattress standards.

4. The FFA, Regulatory Alternatives, and Other FFA Rulemakings

(Comment 13) One commenter argued that we failed to meet requirements of the FFA in proposing this amendment to 16 CFR part 1632. The commenter stated that section 4 of the FFA requires us to base our decision to amend our regulations on research and investigation, and the commenter felt that the proposal had failed to do this.

(Response 13) The proposed amendment is based on substantial research and investigation conducted by NIST. In August 2008, we entered into an IAG with NIST to develop a new cigarette smoldering ignition source. In June 2009, NIST provided a report on its research, ''*NIST Technical Note 1627: Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes.*'' The research described in this report was used to help develop SRM 1196. In July 2009, we posted NIST Technical Note 1627 on our Web site to keep stakeholders informed of the progress of this research and invite comments. We addressed the comments received on NIST Technical Note 1627 in CPSC staff's October 13, 2010, NPR Briefing Package, and the preamble to the proposed rule also discussed the comments (75 FR at 67049). In addition, the staff prepared initial and final regulatory analyses as required by section 4 of the FFA.

(Comment 14) The same commenter argued that we failed to consider all regulatory alternatives and other standards relevant to amending 16 CFR part 1632. Specifically, the commenter argued that we did not consider the extent to which 16 CFR part 1633 renders part 1632 redundant, despite the fact that we have issued an Advance Notice of Proposed Rulemaking (ANPR) to consider whether to revoke 1632 for this reason.

(Response 14) We have a separate proceeding (70 FR 36357 (June 23, 2005)) to consider whether to revoke 16 CFR part 1632. Issues related to the need for 16 CFR part 1632, in light of the existence of a separate mattress standard (16 CFR part 1633), are appropriate for that proceeding and therefore, are outside the scope of this rulemaking. This rulemaking is limited to revising the provision in 16 CFR part 1632 specifying the ignition source for the flammability test required in the Standard.

The Standard requiring mattresses to be resistant to cigarette ignition, 16 CFR part 1632, took effect in 1973. Although smoldering ignition of mattresses (*i.e.,* ignition from cigarettes) has declined since that time, mattress fires ignited by small open flames (such as lighters and candles) have continued to cause a significant number of deaths and injuries. In 2006, we published a flammability standard directed at the hazard of open-flame ignition of mattresses, 16 CFR part 1633, which took effect on July 1, 2007. In the course of the rulemaking to develop 16 CFR part 1633, industry questioned whether there would be overlap between the two mattress flammability standards, making continuation of 16 CFR part 1632 unnecessary. To examine the issue of possible overlap between the two standards, we published an ANPR for the possible revocation or amendment of 16 CFR part 1632, *Standard for the Flammability of Mattresses and Mattress Pads* in June 2005, and invited public comments (70 FR 36357 (June 23, 2005)). Some commenters supported revoking the Standard, while others recommended careful review of the risks, incident data, and benefits of the Standard before revocation is considered.

On October 20, 2005, the Sleep Product Safety Council (''SPSC''), which is a safety division of the ISPA, met with CPSC staff to discuss issues associated with the possible revocation or amendment of the Standard. At that meeting, ISPA/SPSC told us of its plans to work with NIST on a research project to determine whether 16 CFR part 1632 was needed once 16 CFR part 1633 became effective. In addition, ISPA and the SPSC discussed plans for a research project with NIST to develop a predictive, small-scale test for 1632. (The meeting log is at *http://www.cpsc.gov/library/foia/meetings/mtg06/MattressOct20.pdf*). In 2009, ISPA ended the research project at NIST due to problems with controlling standard test materials; the research was not completed, and no data were provided to CPSC from this project. At this time, we are not aware of data indicating that 16 CFR part 1633 eliminates or sufficiently reduces the risk of injury from cigarette ignition of mattresses, such that we could revoke 16 CFR part 1632.

(Comment 15) One commenter asserted that we misunderstand the purpose of 16 CFR part 1632 and that the rule should provide for an ignition source that represents cigarettes that are commercially available today.

(Response 15) The commenter misunderstands the limited nature of this rulemaking. Although we have authority to conduct the rulemaking that the commenter suggests, the FFA does not require it, and it would be a different proceeding altogether. In essence, the commenter wants us to reopen and reexamine the entire purpose of the Standard to see whether a different Standard or different level of protection should be in place than was established when the Standard was created in 1972. This approach would require reevaluation of the level of risk that exists from cigarette ignition of mattresses.

In this proceeding, we are simply specifying a substitute ignition source for the one that currently is specified but is no longer available; we are not changing the level of protection or reevaluating the current level of risk. As discussed in the previous response, the larger questions of the need for 16 CFR part 1632 and evaluation of the current level of risk posed by cigarette ignition of mattresses are outside the scope of this rulemaking.

(Comment 16) The same commenter suggested that we halt this proceeding and act on industry's request to revoke part 1632, issuing an interim rule to suspend part 1632.

(Response 16) The question of revocation or revision of 16 CFR part 1632 in light of 16 CFR part 1633 is the

subject of a different rulemaking proceeding, and these issues are outside of the scope of this rulemaking. If commenters have any data relevant to that issue, they should provide it in connection with that rulemaking. In the meantime, 16 CFR part 1632 continues to be in effect. The ignition source specified in the Standard is no longer available. The purpose of this proceeding is to amend the Standard to specify a comparable ignition source so that reliable and representative testing can continue under the current Standard.

(Comment 17) One commenter stated that we did not consider the potential impact of our pending ANPR regarding the flammability of bedclothes.

(Response 17) On January 13, 2005, we published an ANPR (70 FR 2514) for a possible standard to address open-flame ignition of bedclothes. Because only an ANPR exists, there is no CPSC standard for the flammability of bedclothes. Therefore, there is no basis for us to consider the impact that such a standard might have on this rule.

D. Description of the Revised Ignition Source Provision

We are revising the ignition source provision in the Standard, 16 CFR 1632.4(a)(2), to specify a standard reference material based on research conducted by NIST. The new SRM cigarette is designated SRM 1196. As discussed in section A.2 of this preamble, based on NIST's research, the new SRM cigarette meets the following specification:

- Nominal length: 83 mm ± 2mm;
- Tobacco packing density: 0.270 g/cm^3 ± 0.020g/cm^3;
- Mass: 1.1 g ± 0.1 g;
- Ignition Strength: 70 Percent Full Length Burn (PFLB) to 95 PFLB, using ASTM E 2187, as modified in Section 4.2 of NIST Technical Note 1627; and
- Non-''Fire-Safe Cigarette'' (FSC).

Section 1632.4(a)(2) states that SRM 1196 is available for purchase from the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

E. Final Regulatory Analysis

Section 4(j) of the FFA requires that the Commission prepare a final regulatory analysis when it issues a regulation under section 4 of the FFA and that the analysis be published with the rule. 15 U.S.C. 1193(j). The following discussion extracted from the staff's memorandum titled, ''Final Regulatory Analysis: Smoldering Ignition Source Technical Amendment to the Flammability Standard for Mattresses and Mattress Pads (16 CFR part 1632)'' (Ref. 2), addresses this requirement.

1. Market/Industry Information

Available U.S. Economic Census data in recent years show an estimated total value of shipments of about $5 billion of mattresses and related sleep products (*e.g.,* mattress pads, box springs, innerspring cushions, and air-flotation sleep systems). Domestic employment for this category is estimated at about 20,000 workers. Industry estimates indicate that the number of mattresses (including unconventional items, such as futons, crib and juvenile mattresses, and sleep sofa inserts) shipped in the United States residential market is roughly 25 million units annually. About 5 to 10 percent of this total is comprised of imported products, including some imports marketed by the domestic manufacturers. The proportion of imports for mattress pads is higher.

An estimated 150 to 200 domestic firms produce new mattresses or mattress pads in manufacturing facilities in the United States. An unknown, but potentially similar, number of firms in the United States sell renovated mattresses, which may account for 2.5 million to 5 million units, or between 10 and 20 percent of mattresses sold. Thus, there may be as many as approximately 400 manufacturing firms subject to 16 CFR part 1632. These firms comprise more than 600 production establishments. Larger manufacturers may offer dozens of models, not counting different size designations (*e.g.,* twin, full, queen, king) at any given time; new models may be introduced once or twice per year. Many smaller firms market only a few models and make few, if any, construction changes in a year.

2. Potential Benefits and Costs

The SRM cigarette described in the revised ignition source provision would have approximately the same ignition strength characteristics as originally intended by the Standard. The use of SRM cigarettes would not alter the stringency of the flammability performance tests in the Standard, so the revised provision will not alter the test method itself.

a. Potential Benefits

Because the revised ignition source provision is ''safety-neutral,'' mattresses that pass or fail under the existing Standard would be expected to generate similar results when the NIST-developed SRM is used. The level of protection provided by the Standard would neither increase nor decrease as a result. Thus, there would be no impact on the level or value of fire safety benefits derived from the 16 CFR part 1632 Standard.

However, there would be potential benefits that are not readily quantifiable. Currently, manufacturers and testing laboratories do not have access to continued supplies of test cigarettes other than RIP Pall Mall cigarettes. Existing inventories of conventional Pall Mall cigarettes have been depleted or exhausted. Many industry representatives have requested guidance on the issue of which cigarette to use in testing.

Even if continuing supplies of conventional test cigarettes were available, the variability in cigarette performance described in the NIST research may lead to an unacceptably low level of test outcome reproducibility. This is causing uncertainty among testing firms, and among manufacturers and importers certifying compliance with the Standard. These firms have expressed concern that tests conducted by the CPSC and by industry may not be comparable. This inconsistency could lead to unnecessary additional testing. Specifying the SRM cigarette would reduce inconsistency and uncertainty for industry, testing laboratories, and the CPSC.

b. Potential Costs

Currently, manufacturers incur testing costs related to 16 CFR part 1632 whenever new mattress models are introduced that either: (1) Are of new construction, or (2) have new tickings that may influence cigarette ignition resistance. Larger manufacturers may introduce 20 or more new constructions or ticking substitutions each year. Smaller producers and renovators probably introduce fewer items or rely on prototype developers for multiple models. Assuming that qualified prototypes are developed for all new constructions and ticking substitutions to demonstrate compliance, a range of estimates for annual prototypes and ticking substitutions can be used to project potential costs associated with the proposed amendment to incorporate SRM cigarettes into the Standard.

Pre-Amendment Testing Costs. For most mattress models that require some kind of testing, the testing cost per model to manufacturers is comprised chiefly of: (1) The resource costs of producing the mattresses used for destructive testing, including shipping to a test laboratory; and (2) the laboratory's fee for the testing service, which includes photographic and other records prepared by the test laboratory,

as well as the cigarettes consumed in testing.

The cost of mattresses consumed in prototype testing may amount to approximately $400 for a typical two-mattress test series (although the range can go much higher, to more than $1,000 per mattress for low-volume, specialty items). Prototype test charges reported by third party testing laboratories can vary widely, especially by location. For example, charges for tests performed in China tend to be significantly lower than charges for tests performed in the United States. Overall, these charges, which include the cost of the test cigarettes, may average about $250 per prototype (labor and material costs for manufacturers to perform their own tests may be similar). Thus, the current average total cost per mattress prototype may be roughly $400 + $250 = $650. A ticking substitution test is simpler and much less expensive, requiring only small samples of ticking material, a reusable small-scale test apparatus, and a smaller number of cigarettes; the average total cost may be around $50.

Testing costs incurred for prototypes and ticking substitutions can be allocated over a production run of mattresses. The cost per unit may vary with production volume, the mix of tests performed, and other factors. The examples below incorporate assumptions based on discussions with industry representatives. These examples illustrate some possible baseline cost differences for larger versus smaller firms:

Typical example for a medium-to-large producer:

- 20 new models: 5 new constructions + 15 new tickings
- 5 prototype tests @ $650 each = $3,250
- 15 ticking substitution classification tests @ $50 each = $750
- Total base year cost = $3,250 + $750 = $4,000
- Baseline testing cost for production run of 50,000 units = $0.08 per unit

Typical example for a smaller producer:

- 5 new models: 2 new constructions + 3 new tickings
- 2 prototype tests @ $650 each = $1,300
- 3 ticking substitution classification tests @ $50 each = $150
- Total base year cost = $1,300 + $150 = $1,450
- Baseline testing cost for production run of 5,000 units = $0.29 per unit

These examples reflect the likely average annual testing costs to industry, assuming reasonably full compliance with 16 CFR part 1632. Thus, approximate baseline testing costs for the largest 50 mattress manufacturers combined would be about 50 × $4,000 = $200,000 annually; testing costs for the remaining 350 firms would be about 350 × $1,450 = $507,500. Thus, total estimated baseline testing costs may be about $200,000 + $507,500 = $707,500 per year.

Costs per Firm Associated with the Revised Ignition Source Provision. The only cost increase associated with revising the ignition source provision to specify SRM 1196 is related to the SRM cigarettes. The list price of SRM cigarettes from NIST is $239 for a two-carton minimum order, or about $120 per carton, plus shipping. A carton contains 200 cigarettes, or 10 packs of 20. Shipping charges range from $10 to $55 per order, or about $1 to $5 per carton for a typical 10-carton order. Thus, the estimated total average cost of the SRM cigarettes would be up to about $125 per carton. After we proposed the amendment to the Standard, NIST reduced the price of SRM 1196 by about half, to reduce the potential cost burden on industry. Testing laboratories and others can obtain (RIP) Pall Mall cigarettes currently on the market for regionally varying prices of $60 to $100 per carton. Thus, the cost of cigarettes to parties performing tests may rise from a level of approximately $6 to $10 per pack, to approximately $12.50 per pack, representing an increase of about $2.50 to $6.50 per pack.

Under the protocol in 16 CFR part 1632, new packs of cigarettes are opened for each test sequence. A new prototype or confirmatory test consumes about two packs, and a ticking substitution test consumes about one pack. Assuming an increased cost per pack of $12.50 − 6 = $6.50, the average cost of performing the tests could increase by 2 × $6.50 = $13 per prototype and $6.50 per ticking substitution. This represents a 2 percent increase ($13/$650) in average total resource costs per prototype, and a 12 percent increase ($6.50/$50) in average resource costs per ticking substitution.

In the above ''typical producer'' examples, the larger firm with 20 new models would incur increased prototype costs of 5 × $13 = $65, plus increased ticking substitution costs of 15 × $6.50 = $97.50, for a total annual increase of $65 + $97.50 = $162.50 (about 4 percent of the firm's overall $4,000 annual testing cost). Over a 50,000 unit production run, the cost would be $0.003 (*i.e.,* about one-third of one cent) per unit. The smaller firm with five new models would incur increased prototype costs of 2 × $13 = $26 and increased ticking substitution costs of 3 × $6.50 = $19.50, for a total annual increase of $26 + $19.50 = $45.50 (about 3 percent of the firm's overall $1,450 annual testing cost). Over a 5,000 unit production run, the increased testing cost would be $0.009 (*i.e.,* about one cent) per mattress.

In summary, the expected additional cost of testing related to the revised ignition source provision may range from about $45.50 to $162.50 per firm. The cost over a production run could range from about one-third to one cent per mattress produced under those tests. The distribution of this projected cost among manufacturers and testing laboratories is uncertain because some test laboratories may choose to pass on their increased costs—in the form of higher test fees—to manufacturers, while others may not. Even if all such costs were passed on to manufacturers, it is unlikely that there would be a noticeable effect on wholesale or retail mattress prices.

Aggregate Costs Associated with Revising the Ignition Source Provision. There may be as many as 200 new product manufacturers and 200 renovators, for a total of about 400 firms. The largest 50 firms are assumed to have 20 new models (50 × 20 = 1,000 models to be tested), and the remaining 350 firms to have five new models (350 × 5 = 1,750 models to be tested), for a total of 1,000 + 1,750 = 2,750 models to be tested. The aggregate annual cost of specifying SRM 1196 as the ignition source in the Standard will vary with the number of new prototypes and ticking substitutions. A point estimate can be developed using the pre-amendment baseline examples above and the best available information on these variables.

Using the baseline assumptions for new prototypes versus ticking substitutions, the 50 largest firms would have an average of five prototypes each (for a total of 5 × 50 = 250) and the remaining 350 smaller firms would have two prototypes each (for a total of 2 × 350 = 700); thus, the overall number of prototypes to be performed would be 250 + 700 = 950. The number of ticking substitutions would be 15 each for the larger firms (for a total of 15 × 50 = 750) and three each for the smaller firms (for a total of 3 × 350 = 1,050); the overall number of ticking substitutions would be 750 + 1,050 = 1,800.

At two packs of cigarettes per prototype and one pack per ticking substitution, the estimated quantity consumed in testing would be 2 × 950 = 1,900 for prototypes and 1,800 for ticking substitutions, for a total of 1,900 + 1,800 = 3,700 packs. At an increase of $6.50 per pack, the estimated total

resource cost would be 3,700 × $6.50 = $24,050. This point estimate represents an unweighted average increase of about 3.5 percent of the estimated $707,500 aggregate annual industry testing costs related to 16 CFR part 1632. For annual production of about 25 million mattresses sold in the U.S., the estimated overall average cost is less than one-tenth of one cent per production unit. The recent reduction in the price of SRM 1196 cigarettes by about half reduces the estimated total cost from what was calculated for the proposed amendment by about two-thirds.

In addition to the projected costs to industry, the CPSC and other government agencies (*e.g.,* the California Bureau of Home Furnishings & Thermal Insulation and the Canadian Ministry of Health) would likely purchase small quantities of SRM cigarettes from NIST for compliance testing and related research. Thus, these Federal and other government agencies may incur minor costs, depending on the numbers of tests these organizations may perform in any given year.

The effective date of the rule is one year from the date of publication in the **Federal Register**. Typically, new mattress models are introduced once or twice per year. The effective date would allow this product cycle to proceed without potential disruption or additional testing costs.

In summary, revising the ignition source provision in the Standard to specify the SRM cigarette is not expected to have a significant impact on expected benefits or costs of the Standard in 16 CFR part 1632. Resource costs may amount to roughly $24,000 per year. The revision would, however, reduce test variability and uncertainty among manufacturers subject to the Standard and among testing organizations. Both the expected benefits and likely economic costs are small, and the likely effect on testing costs per new prototype mattress or ticking substitution would be minor, especially when the projected cost is allocated over a production run of complying mattresses.

3. Regulatory Alternatives

The Commission considered two basic alternatives: (1) Specify a different SRM cigarette, with the approximate lower ignition strength of an RIP cigarette; or (2) take no action on the smoldering ignition source issue.

Neither of these two alternatives would likely have a substantial economic impact. There would, however, be some relative differences in terms of resource costs and potential effects on the level of benefits the Standard affords. The advantages and disadvantages of these two basic alternatives are discussed immediately below.

a. Alternate SRM

Under this first alternative, the Commission could amend the Standard to specify a different, lower ignition propensity SRM cigarette. Such an SRM would presumably be closer in ignition strength to the ''worst-case'' RIP cigarettes currently on the market.

There are three possible advantages to specifying an alternative SRM: (1) The problem of test repeatability and reproducibility would be addressed, as it is by specifying SRM 1196; (2) an alternative SRM might better approximate average ignition propensity of commercial cigarettes; and (3) currently, there is a low-ignition propensity SRM (SRM 1082) developed by NIST for use by state regulators in assessing the compliance of RIP cigarettes.

There are three possible disadvantages to specifying an alternative SRM. First, there are no data to establish that a low-ignition propensity SRM would be equivalent or ''safety neutral.'' Moreover, the reliability of mattress test results may not be improved if, for example, only 50 percent of SRM cigarettes burned their full length. It is unknown whether more mattress construction prototypes would pass the test using a lower ignition propensity SRM than they do now with commercial cigarettes. Thus, the impact on mattress production costs is uncertain.

The second possible disadvantage is that the two known technical approaches to developing a lower ignition propensity SRM appear to be incompatible with the test in 16 CFR part 1632. Under existing state regulations, all known commercial RIP cigarettes incorporate banded paper that is designed to impede full-length burns. The test in 16 CFR part 1632 measures mattress ignitions resulting from full-length cigarette burns and allows up to three relights per cigarette to achieve a full length burn. It is likely that either: (1) Many low-ignition propensity cigarettes would be wasted in completing the test; or (2) the test could not be reliably completed using banded-paper, self-extinguishing cigarettes. Additionally, although the existing SRM 1082 (which represents a RIP cigarette) does not use banded-paper technology, it would have the same impracticalities as the banded-paper cigarette under the current Standard. The low ignition propensity design of the existing SRM 1082 is intended to yield a 12 to 15 percent full length burn rate (*i.e.,* the cigarettes are made to self-extinguish 85 to 88 percent of the time). Because this SRM is intended to be used as a calibration tool for cigarette manufacturers subject to state regulations, it is purposely designed to represent a minimal-ignition propensity target, rather than a typical or representative RIP-ignition propensity. Clearly, it would not represent a ''worst-case'' RIP cigarette. Further, SRM 1082 does not meet the specified physical criteria for cigarette length and density; so these cigarettes are physically unlike the current test cigarette or current RIP cigarettes.

The third possible disadvantage is that the properties of a new SRM that would mimic the ignition behavior of ''worst case'' RIP cigarettes have not been characterized. The ''worst case'' RIP cigarette would be one that burns its full length and may, therefore, be similar to its non-RIP counterpart. Insufficient research exists to support a new and different, low-ignition propensity SRM; and a variety of as-yet-unknown modifications to the test method in 16 CFR part 1632 would likely be needed to incorporate such an SRM. The time and cost to develop a new SRM is undetermined, but the existing concern about the short-term availability of a consistent ignition source would not be resolved.

Thus, while a lower ignition strength SRM cigarette may be technically feasible, there is no readily available SRM alternative that would address the need for a consistent, ''safety-neutral'' ignition source.

b. No Action

Under the second alternative, the ignition source specifications in the Standard would remain unchanged. Manufacturers and testers would remain free to conduct tests with any available cigarettes, including RIP Pall Malls, which meet the existing physical parameters.

The possible advantage of the Commission taking no action is that the projected minor increase in resource costs of testing would not be incurred.

The possible disadvantage of the Commission taking no action would be that the basic issue of test result variability due to differences in cigarettes would not be addressed, and the uncertainty and confusion surrounding the reliability of tests for compliance with 16 CFR part 1632 would not be reduced. Manufacturers and testing firms may continue to conduct tests that are either wasteful (in terms of extra RIP cigarettes required to

complete a test) or have irreproducible results.

In summary, there are no readily available, and/or technically feasible, alternatives that would have lower estimated costs and still address the need for a consistent ignition source that retains the ''safety-neutral'' approach of the proposed amendment.

F. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* an agency that engages in rulemaking generally must prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As discussed in the preamble to the proposed rule (75 FR at 67052–53), the Commission determined that, although almost all mattress manufacturers would be considered small firms under the U.S. Small Business Administration's fewer-than-500-employees definition, the proposal would have little or no effect on small producers. The design and construction of existing, compliant mattress products would remain unchanged, and the resource cost increase of using SRM cigarettes would represent a minimal increase in total testing costs. On this basis, the Commission preliminarily concluded that the proposed rule would not have a significant impact on a substantial number of small businesses or other small entities. We received no comments concerning the impact of the proposal on small entities, and we are not aware of any other information that would change the conclusion that the rule will not have a significant impact on a substantial number of small businesses or other small entities. In fact, after we published the proposed rule, NIST lowered the cost of SRM 1196.

This revision of the ignition source provision in the Standard would keep the current mattress test procedure in place but would require that entities performing cigarette ignition tests purchase and use SRM cigarettes at a higher cost than commercial, non-SRM cigarettes. No additional actions would be required of small entities. As discussed in the cost analysis section above, the costs would be borne by mattress manufacturers and importers that perform (or pay fees for) compliance testing. The estimated average increase in testing and certification costs is about $63 per small firm, or less than one cent per production unit. This represents less than one-hundredth of one percent of small firms' average gross revenues. Thus, while almost all mattress manufacturers would be considered small firms, the ignition source revision would not have significant impacts on small firms.

G. Environmental Considerations

As noted in the preamble to the proposed rule (75 FR at 67053), the Commission's regulations state that amendments to rules providing performance requirements for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

H. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The rule will revise one provision of a flammability standard issued under the FFA. With certain exceptions that are not applicable in this instance, no state or political subdivision of a state may enact or continue in effect ''a flammability standard or other regulation'' applicable to the same fabric or product covered by an FFA standard if the state or local flammability standard or other regulations is ''designed to protect against the same risk of the occurrence of fire,'' unless the state or local flammability standard or regulation ''is identical'' to the FFA standard. *See* 15 U.S.C. 1476(a). The rule would not alter the preemptive effect of the existing mattress standard.

Thus, the rule would preempt nonidentical state or local flammability standards for mattresses or mattress pads designed to protect against the same risk of the occurrence of fire.

I. Effective Date

Section 4(b) of the FFA (15 U.S.C. 1193(b)) provides that an amendment of a flammability standard shall become effective one year from the date it is promulgated, unless the Commission finds for good cause that an earlier or later effective date is in the public interest, and the Commission publishes the reason for that finding. Section 4(b) of the FFA also requires that an amendment of a flammability standard shall exempt products ''in inventory or with the trade'' on the date the amendment becomes effective, unless the Commission limits or withdraws that exemption because those products are so highly flammable that they are dangerous when used by consumers for the purpose for which they are intended. We conclude that a one-year effective date is appropriate to ensure ample time for the product cycle and continuing availability of SRM cigarettes from NIST. Therefore, the revised ignition source provision of the Standard will become effective one year after publication in the **Federal Register**.

J. Findings

Section 4(a), (b) and (j)(2) of the FFA require the Commission to make certain findings when it issues or amends a flammability standard. The Commission must find that the standard or amendment: (1) Is needed to adequately protect the public against the risk of the occurrence of fire leading to death, injury, or significant property damage; (2) is reasonable, technologically practicable, and appropriate; (3) is limited to fabrics, related materials, or products which present unreasonable risks; and (4) is stated in objective terms. 15 U.S.C. 1193(b). In addition, the Commission must find that: (1) If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury.

The scope of this rulemaking is limited to revising the ignition source provision in the Standard. The Commission is not making any other changes to the Standard. Therefore, the findings relate only to that revision and not to the entire Standard. These findings are discussed below.

The amendment to the Standard is needed to adequately protect the public against unreasonable risk of the occurrence of fire. The current Standard specifies as the ignition source cigarettes that are no longer being produced. In order for the Standard to continue to be effective (and for labs to test mattresses and mattress pads to determine whether they comply with the Standard), it is necessary to change the ignition source specification. The revision of this provision is necessary to ensure that testing is reliable and that

results will not vary from one lab or manufacturer to another. Such variation would be likely if labs or manufacturers were able to use different ignition sources that have similar physical properties but different burning characteristics.

The amendment to the Standard is reasonable, technologically practicable, and appropriate. The revision to the ignition source provision is based on technical research conducted by NIST, which established that the SRM cigarette is capable of providing reliable and reproducible results in flammability testing of mattresses and mattress pads. SRM 1196 represents an equivalent, safety-neutral ignition source for use in testing to establish compliance with the Standard.

The amendment to the Standard is limited to fabrics, related materials, and products that present an unreasonable risk. The revision of the ignition source provision will not make any changes to the products to which the Standard applies.

Voluntary standards. There is no applicable voluntary standard for mattresses. We are amending an existing federal mandatory standard.

Relationship of benefits to costs. Revising the ignition source provision in the Standard to specify SRM 1196 will allow testing to the Standard to continue without interruption, will maintain the effectiveness of the Standard, and will not significantly increase testing costs to manufacturers and importers of mattresses and mattress pads. Thus, there is a reasonable relationship between benefits and costs of the amendment. Both expected benefits and costs are likely to be small. The likely effect on testing costs would be minor, approximately one-third to one cent per mattress produced under those tests.

Least burdensome requirement. No other alternative would allow the Standard's level of safety and effectiveness to continue. Thus, the revision to the ignition source provision specifying SRM 1196 imposes the least burdensome requirement that would adequately reduce the risk of injury.

K. Conclusion

For the reasons discussed above, the Commission finds that revising the ignition source provision in the Standard (16 CFR part 1632) to specify SRM 1196 as the ignition source is needed to adequately protect the public against the unreasonable risk of the occurrence of fire leading to death, injury, and significant property damage. The Commission also finds that the amendment to the Standard is reasonable, technologically practicable, and appropriate. The Commission further finds that the amendment is limited to the fabrics, related materials, and products that present such unreasonable risks.

L. References

1. Gann, R.G., and Hnetkovsky E.J., *Modification of ASTM E 2187 for Measuring the Ignition Propensity of Conventional Cigarettes,* Technical Note 1627, National Institute of Standards and Technology, Gaithersburg, MD, 20899, 2009.
2. Directorate for Economic Analysis Report, *Final Regulatory Analysis: Smoldering Ignition Source Technical Amendment to the Flammability Standard for Mattresses and Mattress Pads* (16 CFR part 1632).

List of Subjects in 16 CFR Part 1632

Consumer protection, Flammable materials, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

For the reasons given above, the Commission amends 16 CFR part 1632 as follows:

PART 1632—STANDARD FOR THE FLAMMABILITY OF MATTRESSES AND MATTRESS PADS (FF 4–72, AMENDED)

■ 1. The authority citation for part 1632 continues to read as follows:

Authority: 15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b).

■ 2. Section 1632.4(a)(2) is revised to read as follows:

§ 1632.4 Mattress test procedure.

(a) * * *

(2) *Ignition source.* The ignition source shall be a Standard Reference Material cigarette (SRM 1196), available for purchase from the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

* * * * *

Dated: September 20, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–24482 Filed 9–22–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2011–N–0003]

Oral Dosage Form New Animal Drugs; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Cross Vetpharm Group, Ltd. The ANADA provides for use of tylosin tartrate soluble powder in chickens, turkeys, swine, and honey bees.

DATES: This rule is effective September 23, 2011.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed ANADA 200–455 for use of TYLOMED–WS (tylosin tartrate), a water soluble powder, in chickens, turkeys, swine, and honey bees. The abbreviated application is approved as of July 5, 2011, and the regulations are amended in 21 CFR 520.2640 to reflect the approval and to make minor revisions that will improve accuracy of the regulations.

A summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.2640, add paragraph (b)(3); and revise paragraphs (a), (b)(1), (b)(2), (d)(2)(ii), (d)(3)(ii)(A), (d)(3)(ii)(B), and (d)(3)(iii) to read as follows:

§ 520.2640 Tylosin.

(a) *Specifications.* Each container of soluble powder contains tylosin tartrate equivalent to either 100 or 256 grams tylosin base.

(b) * * *

(1) No. 000986 for use of a 100-gram jar as in paragraph (d) of this section.

(2) No. 016592 for use of a 100-gram jar or pouch as in paragraphs (d)(1), (d)(2), (d)(3)(i), (d)(3)(ii)(B), (d)(3)(iii), and (d)(4) of this section.

(3) No. 061623 for use of a 100- or 256-gram jar or pouch as in paragraphs (d)(1), (d)(2), (d)(3)(i), (d)(3)(ii)(B), (d)(3)(iii), and (d)(4) of this section.

* * * * *

(d) * * *

(2) * * *

(ii) *Indications for use.* For maintaining weight gain and feed efficiency in the presence of infectious sinusitis associated with *Mycoplasma gallisepticum* sensitive to tylosin.

* * * * *

(3) * * *

(ii) * * *

(A) For the treatment and control of swine dysentery associated with *Brachyspira hyodysenteriae* when followed immediately by tylosin phosphate medicated feed; and for the control of porcine proliferative enteropathies (PPE, ileitis) associated with *Lawsonia intracellularis* when followed immediately by tylosin phosphate medicated feed.

(B) For the treatment and control of swine dysentery associated with *Brachyspira hyodysenteriae.*

(iii) *Limitations.* Prepare a fresh solution daily. Do not administer within 48 hours of slaughter. As indicated in paragraph (d)(3)(ii)(A) of this section, follow with tylosin phosphate medicated feed as in § 558.625(f)(1)(vi)(*c*) of this chapter.

* * * * *

Dated: September 20, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–24461 Filed 9–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AB24

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS) is issuing this final rule which amends our regulation governing the use of the Automated Clearing House (ACH) network by Federal agencies. The rule adopts, with some exceptions, the 2009 ACH Rules published by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies. Among other things, the final rule includes new requirements to identify all international payment transactions using a new Standard Entry Class Code and to include certain information in the ACH record sufficient to allow the receiving financial institution to identify the parties to the transaction and to allow screening to comply with requirements administered by the Office of Foreign Assets Control (OFAC). In addition, the rule requires financial institutions to provide limited account-related customer information related to the reclamation of post-death benefit payments as permitted under the Payment Transactions Integrity Act of 2008. It also allows Federal payments to be delivered to pooled or master accounts established by nursing facilities for residents of those facilities or held by religious orders whose members have taken vows of poverty.

DATES: October 24, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Bill Brushwood, Director of the Settlement Services Division, at (202) 874–1251 or *bill.brushwood@fms.treas.gov;* Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fms.treas.gov;* or Frank Supik, Senior Counsel, at (202) 874–6638 or *frank.supik@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Proposed Rulemaking

We issued a Notice of Proposed Rulemaking (NPRM) on May 14, 2010, requesting comment on a number of proposed amendments to title 31 CFR part 210 (Part 210). 75 FR 27239. Part 210 governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend Part 210 in order to address changes that NACHA periodically makes to the ACH Rules or to revise the regulation as otherwise appropriate.

International ACH Transactions

In the NPRM, we proposed to incorporate in Part 210 some, but not all, of the changes that NACHA adopted in 2007 and 2008, as reflected in the 2009 ACH Rules book. Those changes include requirements to identify all international payment transactions using a new Standard Entry Class Code and to include in the ACH record certain information sufficient to allow the receiving financial institution to identify the parties to the transaction and the path of the transaction. Effective September 18, 2009, the ACH Rules required Originating Depository Financial Institutions (ODFIs) and Gateway Operators to identify all international payment transactions transmitted via the ACH Network for any portion of the money trail with a new Standard Entry Class Code for International ACH Transactions (IAT). IAT transactions must include the specific data elements defined within the Bank Secrecy Act's (BSA) ''Travel Rule'' so that all parties to the transaction have the information necessary to comply with U.S. law, including the laws administered by OFAC.

Previously, many payments that are international in nature were being introduced as domestic transactions into the U.S. ACH Network through correspondent banking relationships, making it difficult for processing depository financial institutions to identify them for purposes of complying with U.S. law. NACHA's IAT Standard Entry Class Code classifies international payments based on the geographical location of the financial institutions or

money transmitting businesses involved in the transaction, instead of the location of the originator or receiver. As defined in the 2009 ACH Rules, an International ACH Transaction (IAT) entry is:

> A debit or credit Entry that is part of a payment transaction involving a financial agency's office that is not located in the territorial jurisdiction of the United States. For purposes of this definition, a financial agency means an entity that is authorized by applicable law to accept deposits or is in the business of issuing money orders or transferring funds. An office of a financial agency is involved in the payment transaction if it (1) holds an account that is credited or debited as part of the payment transaction; (2) receives payment directly from a Person or makes payment directly to a Person as part of the payment transaction; or (3) serves as an intermediary in the settlement of any part of the payment transaction.

See 2009 ACH Rules, Subsection 14.1.36. The 2009 Operating Guidelines provide various examples of transactions that would be classified as IAT entries. One example deals with pension or Social Security benefit payments delivered to the U.S. bank accounts of retirees residing offshore. If the U.S. bank to which such a payment is delivered further credits the payment to an offshore bank with which it has a correspondent relationship, the entry is to be classified by the ODFI as IAT. In other words, despite being destined to U.S. bank accounts, the transactions would be IATs because the ultimate destinations of the payments are accounts held with offshore banks or financial agencies. The 2009 Operating Guidelines indicate that it is the Originator's obligation to understand the legal domicile of its retirees and inquire whether they hold accounts in U.S. banks or with offshore financial institutions. *See* 2009 Operating Guidelines, Section IV, Chapter XI, Scenario F, p. 209. As applied to Federal payments, this would mean that an agency certifying a payment to a recipient residing overseas must inquire whether the payment, although directed to a domestic bank, will be further credited to a foreign correspondent bank. If so, the agency must classify the payment as IAT.

In the NPRM, we proposed to accept the IAT rule for Federal payments. For Federal benefit payments delivered to overseas recipients in Mexico, Canada and Panama through the FedGlobal ACH Payment Services, we have already implemented the requirements of the IAT rule. For other payments, however, we proposed an effective date of January 1, 2012 in order to allow for the system and operational changes necessary to implement the IAT requirements. We further indicated that we planned to phase in IAT requirements in stages, based on the type of payment and the agency issuing the payment, as expediently as operationally possible. The January 1, 2012 effective date does not affect agencies' obligation to comply to the full extent of their authority with OFAC-administered sanctions programs when certifying payments to Treasury for disbursement.

Lastly, we stated that in implementing the IAT requirements, we anticipated that some agencies will format as an IAT entry any payment to an individual or entity with an address outside the territorial jurisdiction of the U.S. This may result in the identification of some transactions as IATs even though funds do not ultimately leave the United States. However, taking an ''over-inclusive'' approach to implementing IAT greatly eases the administrative burden that Federal agencies would otherwise face. We requested comment from agencies and financial institutions on this over-inclusive approach.

NACHA Rules Enforcement

Effective December 21, 2007, NACHA modified its rules to broaden the scope of Appendix Eleven (The National System of Fines). The Appendix was revised to (1) Allow NACHA to request data from ODFIs for an Originator or Third-Party Sender that appears to exceed a rate of one percent for debit entries returned as unauthorized; and (2) define the circumstances under which NACHA may submit violations related to the ODFI reporting requirement to the National System of Fines. Several other provisions of the National System of Fines were also modified.

Part 210 currently does not incorporate Appendix 11 of the NACHA Rules. *See* 31 CFR 210.2(d)(3). The Federal government is constrained from entering into arrangements that may result in unfunded liabilities. Moreover, we do not believe that subjecting Federal agencies to the System of Fines is necessary or appropriate in light of its underlying purpose. Accordingly, we proposed not to adopt the modifications to Appendix 11. In the event that a Federal agency were to experience a high rate of debit entries returned as unauthorized, we would work with the agency and coordinate with NACHA to address the situation.

ODFI Reporting Requirements

Effective March 20, 2009, NACHA amended its rules to incorporate new reporting requirements for ODFIs within Article Two (Origination of Entries). These reporting requirements require ODFIs to provide, when requested by NACHA, certain information about specific Originators or Third-Party Senders believed to have a return rate for unauthorized debit entries in excess of 1 percent. The rule also requires ODFIs to reduce the return rate for any such Originator or Third-Party Sender to a rate below 1% within 60 days. The amendment replaced a reporting requirement for Telephone-Initiated (TEL) entries that was previously in the ACH Rules.

We proposed not to adopt these reporting requirements. When NACHA adopted the TEL reporting requirement in 2003, we did not adopt it, in part because we did not believe that agencies were likely to experience excessive rates of returned entries, which has proved to be true. Similarly, we do not believe that it is necessary or appropriate to subject Federal agencies to a formal reporting process for unauthorized entries.

Automated Reclamations Process

In addition to addressing ACH Rule changes, we proposed to amend Part 210 to streamline the reclamation process for post-death benefit payments. We requested comment on a proposal to replace the current manual, paper-based reclamation process with a process in which Treasury would proceed with an automatic debit to the financial institution's reserve account in cases where a reclamation is limited to payments received within 45 days after the recipient's death. In the current reclamation process, Treasury sends out a paper Notice of Reclamation to the financial institution. The financial institution must complete, certify and return the paper Notice of Reclamation to Treasury. We requested comment on an approach in which Treasury would proceed with an automatic debit to the financial institution's reserve account, following advance notice to the financial institution of the debit with a right to challenge. We proposed that the automated process apply to situations in which a notice of reclamation is limited to payments received within 45 days after the recipient's death, which constitutes 85% of all reclamations.

Payment Transactions Integrity Act of 2008 Changes

We proposed in the NPRM to require financial institutions to provide certain withdrawer information for all types of benefit payments being reclaimed. Prior to the enactment of the Payment Transactions Integrity Act of 2008, account-related information could be shared only for certain types of benefit

payments. Accordingly, Part 210 currently requires banks to provide only the name and address (not the phone number) of account owners and withdrawers, and only in connection with the reclamation of Social Security Federal Old-Age, survivors, and Disability Insurance benefit payments or benefit payments certified by the Railroad Retirement Board or the Department of Veterans' Affairs. We proposed to require Receiving Depository Financial Institutions (RDFIs) to provide the name and last-known address and phone number for account owners and others who have withdrawn, or were authorized to withdraw, funds subject to a reclamation.

''In the Name of the Recipient'' Requirements

Finally, we proposed to add three exceptions to our long-standing requirement in Part 210 that non-vendor payments be delivered to a deposit account at a financial institution in the name of the recipient. Specifically, we proposed to allow the delivery of Federal payments to resident trust or patient fund accounts held by nursing homes; to accounts held by religious orders for members who have taken a vow of poverty; and to prepaid and stored value card accounts provided that the cardholder's balance is FDIC insured and covered by the consumer protections of the Federal Reserve's Regulation E. This final rule does not address the proposal relating to prepaid cards. We have addressed that proposal in a separate rulemaking published on December 22, 2010.[1] See 75 FR 80335.

Title 31 CFR 210.5(a) provides that, notwithstanding ACH rules 2.1.2, 4.1.3, and Appendix Two, section 2.2 (listing general ledger and loan accounts as permissible transaction codes), an ACH credit entry representing a Federal payment other than a vendor payment shall be deposited into a deposit account at a financial institution. For all payments other than vendor payments, the account at the financial institution must be in the name of the recipient, subject to certain exceptions. Our long-standing interpretation of the words ''in the name of the recipient,'' has been that the payment recipient's name must appear in the account title. See, *e.g.,* 64 FR 17480, referring to discussion at 63 FR 51490, 51499. The requirement is not met if the recipient has an ownership interest in a pooled account and that individual's interest is reflected only in a subacccount record. The ''in the name of the recipient'' requirement is, in essence, a consumer protection policy designed to ensure that a payment reaches the intended recipient. See discussion at 63 FR 51490, 51499. We have had concerns in the past that a Federal benefit payment recipient could enter into, or otherwise be subject to, a master/sub account relationship in which the intended recipient has little control (if any) over the account to which their benefit payments is directed.

1. Accounts Held by Nursing Facilities

On April 21, 2008, the Social Security Administration (SSA) published a **Federal Register** notice requesting comments on arrangements in which Social Security benefit payments are deposited into a third-party's ''master'' account when the third party maintains separate ''sub'' accounts for individual beneficiaries. See 73 FR 21403. SSA specifically asked if nursing homes would be able to receive and manage benefits for their residents without the use of master/sub accounts. The comments received by SSA indicated that the use of master/sub account arrangements by residents of nursing facilities is widespread, and that these arrangements are beneficial for recipients. Based on the comments received, SSA's view is that master/sub accounts held by nursing facilities serve useful purposes and do not present concerns. After consulting with SSA and upon review of the comments submitted to SSA, we proposed in the NPRM an exception to the ''in the name of the recipient'' requirement which would allow payments to be deposited to pooled accounts held by nursing homes.

In the NPRM, we described the specific requirements to which resident trust or patient fund accounts held by nursing facilities are subject under Federal statute and regulation, including the Federal Nursing Home Reform Act. For example, upon written authorization of a resident, facilities must ''hold, safeguard, manage and account for'' the personal funds of the resident deposited with the facility. 42 U.S.C. 1396r(c)(1)(B); 42 CFR 483.10(c)(2). The statute requires that residents be provided a written description of their legal rights that includes a description of the protection of personal funds and a statement that a resident may file a complaint with a state survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility. 42 U.S.C. 1396r(c)(1)(B); 42 CFR 483.10(b)(7)(i). Other statutory provisions address the management of personal funds, including requirements for maintaining separate accounts, the provision of a complete separate accounting of each resident's personal funds, and the maintenance of a written record of all financial transactions involving the personal funds of a resident deposited with the facility. 42 U.S.C. 1396r(c)(6)(B)(i); 42 U.S.C. 1396r(c)(6)(B)(ii). To protect personal funds of residents deposited with a nursing facility, the nursing facility must purchase a security bond to assure the security of all personal funds. 42 U.S.C. 1396r(c)(6)(C). Lastly, nursing facilities may not charge anything for these services. A facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicare or Medicaid. 42 U.S.C. 1396r(c)(6)(D).

In light of the extensive protections provided to residents of nursing facilities whose funds are maintained in resident trust or patient fund accounts, we proposed to establish an exception to the ''in the name of the recipient'' requirement in order to permit payments to be deposited into resident trust or patient fund accounts established by nursing facilities.

2. Accounts for Members of Religious Orders Who Have Taken Vows of Poverty

We also proposed in the NPRM to allow payments disbursed to a member of a religious order who has taken a vow of poverty to be deposited to an account established by the religious order. SSA's **Federal Register** notice regarding master/sub accounts specifically requested comment on accounts established by religious orders for members of such orders who have taken vows of poverty. The comments received did not indicate that there are any problems associated with these accounts, and commenters recommended that they be permitted.

For purposes of defining who is a ''member of a religious order who has taken a vow of poverty,'' we proposed to utilize existing guidance issued by the Internal Revenue Service (IRS). The

[1] On December 22, 2010 we published an interim final rule that allows the delivery of Federal payments to a prepaid card or access device, provided the account is not attached to a line of credit or loan agreement under which repayment from the account is triggered upon delivery of the Federal payments; and the account is set up to meet the requirements for pass-through deposit or share insurance such that the funds accessible through the card or access device are insured for the benefit of the recipient by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund; and the issuer of the card or access device provides the holder of the card with all of the consumer protections that apply to a payroll card account under the rules implementing the Electronic Funds Transfer Act.

treatment for Federal tax purposes of services performed by a member of a religious order who has taken a vow of poverty is addressed in IRS Publication 517 (2008). We requested comment on whether it is appropriate to define the phrase ''member of a religious order who has taken a vow of poverty'' in the same way that the phrase would be defined by IRS for Federal tax purposes.

II. Comments and Analysis

We received 12 comments in response to the NPRM. The commenters represented a variety of perspectives. Comments were submitted by financial institutions, consumer advocacy groups, industry associations, the Senate Committee on Finance, and the House Committee on Ways and Means.

International ACH Transactions

Several entities commented upon the proposal to amend Part 210 to accept NACHA's international ACH transaction (IAT) rule for Federal payments. Most of the commenters supported the application of the IAT rule to Federal payments, including the proposed effective date of January 1, 2012. However, the commenters generally opposed the use by Federal agencies of an ''over-inclusive'' approach to compliance with the IAT requirements in which, as discussed above, Federal agencies would use the IAT Standard Entry Class Code for all payments to individuals or entities with an address outside the territorial jurisdiction of the U.S. Commenters stated that Federal agencies should be expected to comply with the IAT rules in the same manner as the private sector. One commenter stated that the use of an over-inclusive approach ''would result in a shift of the government's compliance costs to receiving depository financial institutions (RDFIs), which would be overly burdensome on and unfair to RDFIs.''

Commenters indicated that IAT transactions are typically viewed as riskier than other transactions and are therefore subject to additional scrutiny, which may increase the time, effort and cost of processing the payments, and potentially may delay the delivery of funds to the recipient. Commenters argued that by overclassifying payments as IATs, the Federal government would be increasing the volume of IAT transactions that financial institutions must handle, which would result in needlessly excessive OFAC screening and other processing costs for financial institutions. Commenters also stated that the overclassification of payments as IATs may result in the delay of delivery of funds to the recipients in some cases, due to the time required to investigate and clear any payments that potentially match the OFAC Specially Designated Nationals (SDN) List.

In view of commenters' concerns regarding the burdens to financial institutions that would result from agencies' use of an overinclusive approach, we have conducted research to quantify the anticipated burden. Based on our research, the burden to financial institutions appears to be minimal. SSA, which is the primary agency interested in pursuing an overinclusive approach, has identified approximately 170,000 benefit payments for recipients with a foreign address that are sent each month to domestic correspondent banks. We believe that most of these 170,000 would be properly classified as IAT entries if SSA undertook to query each payment recipient regarding the ultimate destination of the funds. The payments are generally being delivered to retirees who reside overseas and who, like other retirees, presumably use these benefits for their daily living expenses. SSA and FMS believe that many of these payments are likely to be further credited by U.S. financial institutions to accounts outside the U.S. through correspondent relationships. Therefore, it appears reasonable to assume that many of these 170,000 payments would be properly classified as IAT entries, meaning that the actual number of payments that are improperly classified –and that thus present an unnecessary processing burden for banks—is likely to be relatively insignificant.

Moreover, these 170,000 monthly payments are delivered to over 4,600 domestic financial institutions. Over 3,800 financial institutions receive fewer than 10 of these payments per month, which is a relatively inconsequential number for any particular financial institution. Only thirteen very large financial institutions receive more than 1,000 of these foreign benefit payments monthly. Accordingly, the potential burden to the vast majority of potentially affected financial institutions does not appear to be significant.

Finally, it's important to note that FMS will conduct OFAC screening of all 170,000 payments prior to their origination into the ACH network. FMS's service provider that conducts the OFAC screening will have information that may be used to assist financial institutions that are seeking to clear any of the payments that match the OFAC list. For these reasons, we believe that it is reasonable for agencies to classify payments made to individuals with foreign addresses as IAT entries.

In the NPRM, we discussed the IAT requirements from the perspective of payments made by the Federal government. The IAT requirements also affect collections made by the Federal government, including systems by which individuals or entities authorize the government to originate ACH debits to their domestic accounts for the collection amounts owed. After the effective date of the NACHA IAT rule changes, FMS learned that a few entries were being returned by domestic financial institutions based upon customer instructions to fund a Federal ACH collection debit from a foreign source of funds.

Generally, the IAT requirements will impact two collection systems operated by FMS: Pay.gov, which both originates ACH WEB entries online and ACH PPD, TEL and CCD entries received individually or in files from agencies; and FMS's Debit Gateway, through which ACH debit entries are presented and settled. We have determined that it will take a significant effort over an extended period to implement the changes necessary to process IAT entries. This effort will require that FMS coordinate with affected agencies and reallocate resources. Accordingly, we are establishing a new date of June 30, 2013, as of which the IAT requirements will be implemented into Pay.gov and the Debit Gateway. After June 30, 2013, FMS will work with agencies to transition them into compliance based upon the readiness of the systems involved and the business need of the agency. In an effort to continue progressing forward with implementing the IAT requirements, we expect to implement a limited IAT pilot in Pay.Gov and the Debit Gateway in late 2012.

Finally, we are exempting entries representing Federal tax payments made to the IRS from the IAT classification requirements due to their extremely low risk, and the need for taxpayers to receive timely credit for their payments made as a result of tax liabilities. IRS rules require receipt of funds on exact tax due dates, with substantial penalties and interest charged to individuals and corporations for late payments received. Millions of taxpayers authorize payment entries for tax payments using FMS's Electronic Federal Tax Payment System (EFTPS) with an enrollment process through which the taxpayer can authorize the origination of a debit entry to his or her bank account. The accounts from which EFTPS transactions are funded are accounts confirmed to be at domestic depository institutions as determined by the bank's routing number, and these accounts are

monitored for OFAC compliance by the account-holding financial institutions. In light of these facts and the unique nature of tax payments, as opposed to transactions involving the purchase of goods or services or other government fees, we believe the risk associated with tax payments processed through EFTPS is very low. We have consulted with OFAC staff regarding this matter and they have concurred that our approach toward tax payments is reasonable from a risk-based compliance perspective.

In the NPRM FMS proposed to adopt the IAT rule for Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal ACH Payment Service, effective immediately. For all other Federal payments, we proposed an effective date of January 1, 2012. We are finalizing this proposal for ACH credit entries originated by Federal agencies. For ACH debit entries originated by Federal agencies, we are establishing a later effective date of June 30, 2013.

NACHA Rules Enforcement

Two commenters provided comments regarding the proposed continued exclusion from NACHA's national system of fines. One commenter expressed a preference that the Federal government be subject to the NACHA National System of Fines (Appendix Eleven of the NACHA Operating Rules). The other commenter recognized that FMS has consistently excluded the Federal government from the national system of fines because the Federal government is prohibited from entering into agreements for contingent liabilities that might result in unfunded liabilities. The commenters did not identify any problems that have resulted from FMS's prior decisions to exempt the Federal government from Appendix Eleven.

We believe that modifying Part 210 to subject the Federal government to Appendix Eleven could contravene the government's obligation to avoid unfunded liabilities. Moreover, none of the commenters indicated that this position has caused undue hardship in the past. If an agency experiences a high rate of debit entries that are returned as unauthorized, or if an agency or FMS identifies an ACH rule issue, FMS remains willing to coordinate with NACHA and the agency to address the issue. Therefore, we are adopting this proposal without modification.

ODFI Reporting Requirements

Two commenters provided comments regarding FMS's proposal not to adopt NACHA's new reporting requirements for ODFIs when certain Originators or Third-Party Senders are believed to have a return rate for unauthorized debit entries in excess of one percent. One commenter expressed a preference that the Federal government be subject to the reporting requirements, whereas the other commenter recognized that FMS has consistently excluded the Federal government from the reporting requirements when those requirements may unduly burden the Federal government without yielding countervailing benefits. Neither commenter identified specific problems that would result from continuing to exempt the Federal government from these reporting requirements.

We are adopting this proposal without modification. We remain willing to coordinate with NACHA to address issues that may arise if an agency experiences an excessive unauthorized return rate.

Automated Reclamations Process

Several commenters submitted comments regarding our proposal for automating reclamations. Commenters were generally supportive of the objectives of achieving cost savings and efficiencies in the reclamations process. Some commenters acknowledged that the current paper-based process can be burdensome for FMS and financial institutions, and that an updated process could benefit both parties. However, commenters generally expressed significant concerns that the proposed process was not sufficiently developed or clear, would be burdensome for financial institutions and would add complexity to the current reclamation procedures, thereby negating efforts to streamline the process and reduce the amount of paper produced. Several commenters suggested that FMS work with affected financial institutions to further refine and test any proposed process before final implementation.

In light of commenters' concerns, which we agree are generally valid, and our desire to identify the most effective solution to respond to the issues identified by commenters, we are not finalizing the proposal to automate the reclamations process at this time. Instead, we will work to develop an approach that addresses the concerns raised by commenters, which we may publish for comment in a future notice of proposed rulemaking. During this period of further study, we plan to continue to expand and refine the use of the Centralized Reclamation Application currently in use.

Payment Transactions Integrity Act of 2008 Changes

Several commenters provided input on FMS's proposal to require RDFIs to provide the name, last-known address and phone number for account owners and others who have withdrawn, or were authorized to withdraw, funds subject to reclamation. The commenters stated that financial institutions may not have telephone numbers for all deposit account owners and authorized signers, or that financial institutions may not have accurate or current information. The commenters expressed concern that financial institutions would be held accountable for the accuracy of the information in their records or might even be required to obtain that information.

We are finalizing the requirement to provide the proposed information. To clarify that a financial institution is only required to provide information in its records, and would have no liability for the accuracy of that information, we have modified the wording of the regulation text to state that the RDFI must provide the name, last known address and phone number ''as reflected on the RDFI's records.''

''In the Name of the Recipient'' Requirements

1. Accounts Held by Nursing Facilities

The comments we received generally supported the proposed exception, which would allow a Federal payment that is disbursed to a resident of a qualifying nursing facility to be deposited into a resident trust or patient fund account established by the nursing facility. One commenter stated its belief that this change will assist nursing home residents. Another commenter suggested that the final rule further clarify that eligible nursing homes should be subject to certain types of oversight. Some financial institutions that commented expressed some concern that financial institutions could be held liable if funds are misapplied and suggested that the final rule either: (1) Specify that the payment be deposited into an account that is designated as a resident trust or patient fund account; or (2) allow the payment to be deposited into a deposit account established by the nursing facility.

We are finalizing the exception for accounts held by nursing facilities as proposed, with one change. We have revised the wording of the exception to provide that where a Federal payment is disbursed to a resident of a nursing facility, as defined in 42 U.S.C. 1396r, the payment may be deposited into a resident trust or patient fund account

established by the nursing facility ''pursuant to requirements under Federal law relating to the protection of such funds.'' We believe that this wording addresses commenters' concerns by making clear that an eligible account is restricted to ''a resident trust or patient fund account'' established by ''a nursing facility as defined in 42 U.S.C. 1396r'' and that the account is subject to all of the requirements governing the protection of funds held in resident trust or patient fund accounts.

2. Accounts for Members of Religious Orders Who Have Taken Vows of Poverty

Commenters generally supported this proposal and none of the commenters criticized or voiced concerns regarding this proposal. In light of the comments and the reasons discussed above, we are finalizing this exception as proposed.

III. Final Rule

Summary

In the final rule, we are adopting all of the proposed amendments to Part 210 set forth in the NPRM, except as follows:

1. International ACH Transactions: We are finalizing the effective date of the IAT rule as proposed in the NPRM for credit entries originated by Federal agencies. We are extending the effective date for the application of the IAT rule to debit entries originated by Federal agencies in Pay.gov and the Debit Gateway until June 30, 2013. We plan to implement a limited IAT pilot in late 2012, and then transition agencies into compliance after June 30, 2013, based upon the readiness of the systems involved and the business need of the agency.

2. Automated Reclamations Process: We are not finalizing the proposal to automate the reclamations process at this time. FMS plans to expand the use of the Centralized Reclamation Application to additional financial institutions and work with the financial industry to further streamline the reclamation process. We will continue to evaluate solutions to respond to commenters' concerns about automating the reclamation process. If we decide to pursue changes to the reclamation process that require an amendment to Part 210, we will publish a new notice of proposed rulemaking with request for comment.

3. Payment Transactions Integrity Act of 2008 Changes: We are finalizing the requirement that RDFIs provide certain information in connection with a reclamation, but have added language to make it clear that the financial institution's obligation to provide the information is limited to information contained in its records and that the financial institution is not liable if that information is inaccurate.

4. Prepaid Card Exception: The final rule does not address the proposed exception to the ''in the name of the recipient'' requirement for prepaid cards. That proposal was addressed in a separate rulemaking published on December 22, 2010. See 75 FR 80335.

Section-by-Section Analysis

In order to incorporate in Part 210 the ACH rule changes that we are accepting, we are replacing references to the 2007 ACH Rules book with references to the 2009 ACH Rules book. No change to Part 210 is necessary in order to exclude the amendments to the rules enforcement provisions, since Part 210 already provides that the rules enforcement provisions of Appendix 11 of the ACH Rules do not apply to Federal agency ACH transactions. See § 210.2(d).

§ 210.2(d)

The definition of applicable ACH Rules at § 210.2(d) is amended to refer to the rules published in NACHA's 2009 Rules book. Section 210.2(d)(6) is revised to reflect a numbering change to the ACH Rules pursuant to which former ACH Rule 2.11.2.3 is now ACH Rule 2.12.2.3. Section 210.2(d)(7) is revised to remove a reference to former ACH Rule 2.13.3, which required reporting regarding unauthorized Telephone-Initiated entries. NACHA has replaced that reporting requirement with a broader reporting requirement (ACH Rule 2.18). Section § 210.2(d)(7) sets forth the broader reporting requirement, which we are not adopting.

Section 210.2(d)(8) has been added in order to exclude debit entries originated by agencies from ACH Rule 2.11 (International ACH Transactions) until June 30, 2013. Credit entries originated by agencies, other than Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal(SM) ACH Payment Service, are excluded from ACH Rule 2.11 until January 1, 2012. In addition, entries representing the payment of a Federal tax obligation are entirely excluded from ACH Rule 2.11.

§ 210.3(b)

We are amending § 210.3(b) by replacing the references to the ACH Rules as published in the 2007 Rules book with references to the ACH Rules as published in the 2009 Rules book.

§ 210.5(b)

New paragraphs (b)(6) and (b)(7) create additional exceptions to the requirement in paragraph (a) that all payments other than vendor payments be delivered to an account in the name of the recipient. Paragraph (b)(6) allows payments disbursed to a resident of a nursing facility, as defined in 42 U.S.C. 1396r, to be deposited into a resident trust or patient fund account established by the nursing facility. Paragraph (b)(7) allows payments disbursed to a member of a religious order who has taken a vow of poverty, as defined for purposes of IRS regulations, to be deposited to an account established by the religious order.

§ 210.11

Section 210.11(b)(3)(i) requires RDFIs to provide the name, last-known address and phone number for account owners and others who have withdrawn, or were authorized to withdraw, funds from the account, as permitted by the Payment Transactions Integrity Act of 2008. The RDFI is only obligated to provide information shown on its records, and is not liable to the government if the information is inaccurate.

IV. Procedural Requirements

Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act Analysis

It is hereby certified that the rule will not have a significant economic impact on a substantial number of small entities. We believe the rule will affect only a limited number of small entities and that any economic impact will be minimal. The rule requires financial institutions that hold accounts to which post-death benefit payments have been delivered to provide the government

with the name, address and phone number for account owners and others who have withdrawn funds. Financial institutions are already required to provide detailed information to the government in connection with such accounts by completing and returning Form FMS–133. In most cases financial institutions are already required to provide names and addresses on Form FMS–133 and the only additional information required will be a phone number. Financial institutions that commented on the rule did not indicate that the requirement would be burdensome or have any economic effect if they are only required to provide information contained in their records, which the final rule expressly provides. The Burden Estimate Statement on FMS–133 states that the estimated average time associated with filling out the form is 12 minutes. FMS does not believe that the requirement to provide a phone number or, in limited cases, the name and address of a withdrawer, will affect the 12 minute estimate.

The final rule will allow, but not require, the delivery of Federal non-vendor payments to certain types of pooled accounts held by nursing homes and religious orders, regardless of size. For nursing homes that do not wish to receive Federal payments on behalf of residents, there will be no economic impact. For nursing homes that wish to receive Federal payments to established patient funds accounts, there should be no economic impact because there is no cost to receive a direct deposit payment. For nursing homes that wish to receive Federal payments for patients but that have not already established patient fund accounts for the management of other patient funds, the costs would include the fees, if any, charged by a financial institution to maintain the account and the cost of obtaining a surety bond. The average monthly payment amount for a Supplemental Security Income (SSI) check recipient is $545 and the average monthly payment amount for a Social Security (SSA) check recipient ranges from $808–$915. For small nursing homes that have, by definition, a small number of residents, the cost of a bond to insure against defalcation of these modest monthly payments should be insignificant. Any economic impact for these entities therefore is not expected to be significant. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

For the reasons set forth in the preamble, 31 CFR part 210 is amended as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

■ 2. In § 210.2, revise paragraph (d) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before September 18, 2009, as published in Parts IV, V and VII of the ''2009 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network'' (incorporated by reference, § 210.3) except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rules 1.2.4 and 2.2.1.12; Appendix Eight; and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.10; 2.6; and 4.8 (governing the reclamation of benefit payments);

(5) ACH Rule 9.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of ''Effective Entry Date'' in Appendix Two);

(6) ACH Rule 2.12.2.3 (requiring that originating depository financial institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries);

(7) ACH Rule 2.18 (requiring reporting and reduction of high rates of entries returned as unauthorized); and

(8) ACH Rule 2.11 (International ACH Transactions), which shall not apply (i) until January 1, 2012 to credit entries other than Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal ACH Payment System; (ii) until June 30, 2013 for debit entries originated by agencies; and (iii) to entries representing the payment of a Federal tax obligation by a taxpayer.

* * * * *

■ 3. In § 210.3, revise paragraph (b) to read as follows:

§ 210.3 Governing law.

* * * * *

(b) *Incorporation by reference—applicable ACH Rules.* (1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 18, 2009, as published in Parts IV, V, and VII of the ''2009 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network.'' The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ''ACH Rules'' are available from NACHA—The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, Virginia 20171. You may inspect a copy at the Financial Management Service, 401 14th Street, SW., Room 400A, Washington, DC 20227 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call 202–741–6030.

(2) Any amendment to the applicable ACH Rules that is approved by NACHA—The Electronic Payments Association after January 1, 2009, shall not apply to Government entries unless the Service expressly accepts such

amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** notice expressly accepting such amendment.

* * * * *

■ 4. In § 210.5, redesignate paragraph (b)(6) as (b)(8) and add new paragraphs (b)(6) and (b)(7) to read as follows:

§ 210.5 Account requirements for Federal payments.

* * * * *

(b) * * *

(6) Where a Federal payment is disbursed to a resident of a nursing facility, as defined in 42 U.S.C. 1396r, the payment may be deposited into a resident trust or patient fund account established by the nursing facility pursuant to requirements under Federal law relating to the protection of such funds.

(7) Where a Federal payment is disbursed to a member of a religious order who has taken a vow of poverty, the payment may be deposited to an account established by the religious order. As used in this paragraph, the phrase ''member of a religious order who has taken a vow of poverty'' is defined as it would be by the Internal Revenue Service for Federal tax purposes.

* * * * *

■ 5. In § 210.11, revise paragraph (b)(3)(i) to read as follows:

§ 210.11 Limited liability.

* * * * *

(b) * * *

(3)(i) Provide the name, last known address and phone number, as shown on the RDFI's records, of the following person(s):

(A) The recipient and any co-owner(s) of the recipient's account;

(B) All other person(s) authorized to withdraw funds from the recipient's account; and

(C) All person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

* * * * *

Dated: September 12, 2011.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2011–23898 Filed 9–22–11; 8:45 am]

BILLING CODE 4810–35–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1907

Classification Challenge Regulations

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: Consistent with Executive Order 13526, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public Classification Challenge regulations. As a result of this review, the Agency has revised its Classification Challenge regulations to more clearly reflect the current CIA organizational structure and policies and practices, and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedures Act for rules of agency procedure and interpretation and the CIA Act.

DATES: Effective September 23, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, (703) 613–1379.

SUPPLEMENTARY INFORMATION: Consistent with Executive Order 13526, the CIA has undertaken and completed a review of its public Classification Challenge regulations. As a result of this review, the Agency has revised its Classification Challenge regulations to more clearly reflect the current CIA organizational structure, record system configuration, and policies and practices and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedures Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation and Section 6 of the CIA Act, as amended, 50 U.S.C. 403g.

List of Subjects in 32 CFR Part 1907

Classification challenge, Classified information.

Accordingly, the CIA is amending 32 CFR part 1907 as follows:

PART 1907—CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO SEC. 1.8 OF EXECUTIVE ORDER 13526

■ 1. The authority citation for part 1907 is revised to read as follows:

Authority: Executive Order 13526 75 FR 707, 3 CFR 2010 Comp., P. 298–327; section 102 of the National Security Act of 1947; section 6 of the CIA Act of 1949.

■ 2. Revise the part heading to read as set forth above.

■ 3. Revise § 1907.01 to read as follows:

§ 1907.01 Authority and purpose.

(a) *Authority:* This Part is issued under the authority of and in order to implement section 1.8 of E.O. 13526, section 102 of the National Security Act of 1947, and section 6 of the CIA Act of 1949.

(b) *Purpose:* This part prescribes procedures for non-Agency personnel who are authorized holders of CIA information, to challenge the classification status, whether classified or unclassified, based on a good faith belief that the current status of CIA information is improper. This part and section 1.8 of Executive Order 13526 confer no rights upon members of the general public or individuals who are not authorized holders of CIA information.

■ 4. In § 1907.02, revise paragraphs (b) and (j) and add paragraphs (k) and (l) as follows:

§ 1907.02 Definitions.

* * * * *

(b) *Authorized holder* means anyone who has satisfied the conditions for access to classified information stated in section 4.1(a) of Executive Order 13526 and who has been granted access to such information; the term does not include anyone authorized such access by section 4.4 of Executive Order 13526.

* * * * *

(j) *The Order* means Executive Order 13526 of December 29, 2009 and published at 75 FR 707 (or successor Orders).

(k) *Chief, Classification Management and Collaboration Group* refers to the Agency official authorized to make the initial Agency determination with respect to a challenge of the classification status of CIA information.

(l) *Agency Release Panel* refers to the Agency's forum for reviewing information review and release policy, the adequacy of resources available to all Agency declassification and release programs, and hearing appeals in accordance with this section.

■ 5. Revise § 1907.12 to read as follows:

§ 1907.12 Requirements as to form.

The challenge shall include identification of the challenger by full name, Executive Branch agency, title of position, and information required for verification of access, security clearance, and status as an authorized holder of the CIA information in question. In addition, the challenger must clearly identify documents or

portions of documents at issue and identify and describe the reasons why it is believed that the information is improperly classified. The challenge, itself, must be properly marked and classified and, in this regard, the authorized holder must assume the current classification status and marking of the information is correct until determined otherwise unless the challenger asserts that the information marked unclassified should be classified or that the information should be classified at a higher level, in which case the challenger should mark the challenge and related documents at the asserted classification level.

■ 6. Revise § 1907.21 to read as follows:

§ 1907.21 Exceptions.

(a) Documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement is not covered by this section.

(b) Whenever the Agency receives a classification challenge to information that has been the subject of a challenge within the past two years, the Agency is not required to process the challenge beyond informing the challenger of this fact and the prior review decision; advising the challenger of the right to appeal a final Agency decision to the Interagency Security Classification Appeals Panel (ISCAP); and informing the challenger that if they wish to exercise this right, they must do so through Chief, Classification Management and Collaboration Group who will then forward the appeal to the ISCAP.

(c) The Agency is not required to process classification challenges to information that is the subject of pending litigation. If the information that is the subject of a challenge falls into this category, the Agency will take no action on the challenge and will notify the challenger of this fact within 10 business days.

§ 1907.22 [Removed and Reserved]

■ 7. Remove and reserve § 1907.22.

■ 8. Revise § 1907.23 to read as follows:

§ 1907.23 Designation of authority to hear challenges.

(a) *Chief, Classification Management and Collaboration Group* shall be responsible for the initial Agency decision in a classification challenge.

(b) *Agency Release Panel (ARP).* Appeals of denials of classification challenges shall be reviewed by the ARP which shall issue the final Agency decision in accordance with 1907.25(c).

(c) *ARP membership:* The ARP is chaired by the Chief, Information Review and Release Group and composed of the Information Review Officers from the various Directorates and the Director, Central Intelligence Agency area, as well as the representatives of the various release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel.

■ 9. Revise § 1907.24 to read as follows:

§ 1907.24. Initial determination.

(a) Formal challenges shall be directed to the CIA Information and Privacy Coordinator (Coordinator) who shall promptly forward the challenge to the C/CMCG for action. The C/CMCG shall be responsible for the administrative processing of the challenge consistent with this section.

(b) Within 10 business days of receipt of a challenge, the Coordinator shall record the receipt of the challenge and provide the challenger with written acknowledgement of the Agency's receipt.

(c) Except as provided in paragraph (d) of this section, the Agency shall render an initial written response to a challenge within 60 business days of receipt.

(d) If the C/CMCG determines that the Agency is unable to respond with a determination within 60 business days of receipt of the challenge, C/CMCG will inform the Coordinator who will provide the challenger with written notice of the date by which the Agency will respond and a statement that if no Agency response is received within 120 business days, the challenger has the right to have the challenge forwarded to the ISCAP, and may exercise this right through C/CMCG who will then forward the challenge to ISCAP.

(e) The C/CMCG, after consultation with the originator of the information and other parties shall inform the Coordinator of the initial decision on the challenge and the Coordinator shall promptly inform the challenger of the decision in writing and inform the challenger of the right to appeal to the ARP if the challenge was denied.

■ 10. Revise § 1907.25 to read as follows:

§ 1907.25 Action on appeal of initial Agency determination.

(a) The challenger may, within 45 calendar days of receiving notice of a denial of the challenge, appeal the denial to the ARP by sending the appeal and any supplementary information in support of the challenge to the Executive Secretary of the ARP (ES/ARP).

(b) Within 10 business days of receipt of an appeal, the ES/ARP will record receipt, provide the challenger with written acknowledgement, and forward the appeal to C/CMCG, the appropriate IMTOs, originator, and other appropriate parties, who shall review the appeal and related materials, and within 30 business days provide a written recommendation to the ARP.

(c) The ARP shall meet on a regular schedule and may take action when a simple majority of the total membership is present. Issues shall be decided by a majority of the members present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the ES/ARP, refer such matters to the Director, Information Management Services (D/IMS) for decision. In the event of a disagreement with any decision by D/IMS related to the classification challenge, Directorate heads may appeal to the Associate Deputy Director, CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

(d) The ES/ARP shall promptly provide the challenger with written notice of the final Agency decision and, if the appeal is denied, inform the challenger of the right to appeal to the ISCAP through C/CMCG, who will forward the appeal to the ISCAP.

■ 11. Revise § 1907.26 to read as follows:

§ 1907.26 Prohibition on adverse action.

Agency correspondence to the challenger shall include a notice that CIA will take no adverse action or retribution against the challenger for bringing the classification challenge in good faith.

■ 12. Revise § 1907.31 to read as follows:

§ 1907.31 Right of appeal.

A right of appeal may be available to the ISCAP established pursuant to section 5.3 of the Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office.

Dated: August 10, 2011.

Joseph W. Lambert,

Director, Information Management Services.

[FR Doc. 2011–21574 Filed 9–22–11; 8:45 am]

BILLING CODE 6310–02–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1908

Mandatory Declassification Review

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: Consistent with Executive Order 13526, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public Mandatory Declassification Review (MDR) regulations that govern certain aspects of its processing of MDR requests. As a result of this review, the Agency has revised its MDR regulations to more clearly reflect the current CIA organizational structure and policies and practices, and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act for rules of agency procedure and interpretation.

DATES: Effective September 23, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, (703) 613–1379.

SUPPLEMENTARY INFORMATION: Consistent with Executive Order 13526, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public Mandatory Declassification Review (MDR) regulations that govern certain aspects of its processing of MDR requests. As a result of this review, the Agency has revised its MDR regulations to more clearly reflect the current CIA organizational structure and policies and practices, and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation.

List of Subjects in 32 CFR Part 1908

Classified information, Mandatory declassification review.

Accordingly, the CIA is amending 32 CFR part 1908 as follows:

PART 1908—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO SEC. 3.5 OF EXECUTIVE ORDER 13526

■ 1. The authority citation for part 1908 is revised to read as follows:

Authority: Executive Order 13526 75 FR 707, 3 CFR 2010 Comp., p. 298–327 (or successor orders).

■ 2. Revise the part heading to read as set forth above.

■ 3. Revise § 1908.01 to read as follows:

§ 1908.01 Authority and purpose.

(a) *Authority:* This part is issued under the authority of and in order to implement section 3.5 of E.O. 13526 (or successor Orders); the CIA Information Act of 1984), as amended (50 U.S.C. 431; section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and section 6 of the CIA Act of 1949, as amended (5 U.S.C. 403g).

(b) *Purpose:* This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the Executive Order 13526 or predecessor Orders. Section 3.5 of Executive Order 13526 and these regulations are not intended to and do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees, or agents, or any other person.

■ 4. In § 1908.02, revise paragraphs (d) and (l), and add paragraph (m) to read as follows:

§ 1908.02 Definitions.

* * * * *

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the mandatory declassification review provisions of Executive Order 13526;

* * * * *

(l) *The Order* means Executive Order 13526 of December 29, 2009 and published at 75 FR 707 (or successor Orders);

(m) *Agency Release Panel (ARP)* refers to the Agency's forum for reviewing information review and release policy, the adequacy of resources available to all Agency declassification and release programs, and hearing appeals in accordance with this section.

■ 5. Revise § 1908.04 as follows:

§ 1908.04 Suggestions and complaints.

The Agency welcomes suggestions, comments, or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 13526. Members of the public shall address such communications to the CIA Information and Privacy Coordinator. The Agency will respond as determined feasible and appropriate under the circumstances.

■ 6. Revise § 1908.12 to read as follows:

§ 1908.12 Exceptions.

Mandatory Declassification Review requests will not be accepted from an individual who is not a citizen of the United States or an alien lawfully admitted for permanent residence, nor from a foreign government entity or any representative thereof. Declassification review requests will not be accepted for documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement; for information that is the subject of pending litigation; nor for any document or material containing information contained within an operational file exempted from search and review, publication, and disclosure under the Freedom of Information Act. If the Agency has reviewed the requested information for declassification within the past two years, the Agency will not conduct another review, but the Coordinator will notify requester of this fact, the prior review decision, and of applicable appeal rights pursuant to section 3.5(e) of the Order.

■ 7. Revise § 1908.13 to read as follows:

§ 1908.13 Requirements as to form.

The request shall describe the document or material containing the information with sufficient specificity to enable the Agency to locate it with a reasonable amount of effort.

§ 1908.14 [Amended]

■ 8. Add § 1908.14 to read as follows:

§ 1908.14 Fees.

(a) *Form of payment.* Fees may be paid in cash, by a check drawn on or money order made payable to the Treasurer of the United States.

(b) *Reproduction fees.* Requesters submitting requests via NARA or the various Presidential libraries or making requests directly to this Agency shall be responsible for reproduction costs as follows: Fifty cents per page and $10.00 per CD. There is a minimum fee of $15.00 per request for reproductions.

(c) *Search and review fees.* Requesters making requests directly to this agency also shall be liable for search and review fees as follows.

(d) *Search fees.* Applicable fees will be due even if our search locates no responsive information or some or all of the responsive information must be withheld under applicable authority.

(e) *Computer searching.* (1) Clerical/Technical—$20.00 per hour (or fraction thereof).

(2) Professional/Supervisory—$40.00 per hour (or fraction thereof).

(3) Manager/Senior Professional—$72.00 per hour (or fraction thereof).

(f) *Manual searching.* (1) Clerical/Technical—$20.00 per hour (or fraction thereof).

(2) Professional/Supervisory—$40.00 per hour (or fraction thereof).

(3) Manager/Senior Professional—$72.00 per hour (or fraction thereof).

(g) *Document review.* (1) Professional/Supervisory—$40.00 per hour (or fraction thereof).

(2) Manager/Senior Professional—$72.00 per hour (or fraction thereof).

(3) CIA will not charge review fees for time spent resolving general legal or policy issues regarding the responsive information.

§ 1908.22 [Removed and Reserved]

■ 9. Remove and reserve § 1908.22.

■ 10. In § 1908.23, revise paragraph (b) to read as follows:

§ 1908.23 Determination by originator or interested party.

* * * * *

(b) *Required determinations:* These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information, including the category of protected information as set forth in section 1.4 of the Order, and, if older than ten years, the basis for the extension of classification time under sections 1.5 and 3.3 of the Order. These parties shall also indicate whether withholding is otherwise authorized and warranted in accordance with sections 3.5(c) and 6.2(d) of the Order.

* * * * *

§ 1908.24 [Removed and Reserved]

■ 11. Remove and reserve § 1908.24.

■ 12. Revise § 1908.33 to read as follows:

§ 1908.33 Designation of authority to hear appeals.

(a) *Appeals:* Appeals of initial denial decisions under the Mandatory Declassification Request provisions of Executive Order 13526 shall be reviewed by the Agency Release Panel, which shall issue the final Agency decision.

(b) *Membership:* The Agency Release Panel (ARP) is chaired by the Chief, Information Review and Release Group and composed of the Information Review Officers from the various Directorates and the Director, Central Intelligence Agency area, as well as the representatives of the various release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP.

(c) *Decisions:* The ARP shall meet on a regular schedule and may take action when a simple majority of the total membership is present. Issues shall be decided by a majority of the members present. Any member of the ARP disagreeing with the results of a vote may appeal the decision in writing to the Director, Information Management Services (D/IMS). The appeal shall set forth clearly and concisely the reasons D/IMS should reverse the ARP's decision. Upon receiving the written appeal, D/IMS shall have ten business days to affirm or reverse, in writing the APR's decision and shall so notify the appellant. In the event of a disagreement with any declassification and release decision by D/IMS, Directorate heads may appeal to the Associate Deputy Director of CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

§ 1908.35 [Removed and Reserved]

■ 13. Remove and reserve § 1908.35.

■ 14. Revise § 1908.36 to read as follows:

§ 1908.36 Notification of decision and right of further appeal.

The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the final Agency decision to the requester, NARA, or the particular Presidential Library. That correspondence shall include a notice, if applicable, that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to section 5.3 of the Order.

■ 15. Revise § 1908.41 to read as follows:

§ 1908.41 Right of Further Appeal.

A right of further appeal may be available to the Interagency Security Classification Appeals Panel established pursuant to section 5.3 of the Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office.

Dated: August 10, 2011.

Joseph W. Lambert,

Director, Information Management Services.

[FR Doc. 2011–21572 Filed 9–22–11; 8:45 am]

BILLING CODE 6310–02–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1909

Access by Historical Researchers and Certain Former Government Personnel

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: Consistent with Executive Order 13526, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public regulations on access by historical researchers and certain former government personnel. As a result of this review, the Agency has revised its access regulations to more clearly reflect the current CIA organizational structure and policies and practices, and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act for rules of agency procedure and interpretation.

DATES: Effective September 23, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, (703) 613–1379.

SUPPLEMENTARY INFORMATION: Consistent with Executive Order 13526, the CIA has undertaken and completed a review of its public regulations on access by historical researchers and certain former government personnel. As a result of this review, the Agency has revised its access regulations to more clearly reflect the current CIA organizational structure and policies and practices, and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation.

List of Subjects in 32 CFR Part 1909

Access by historical researchers and certain former government personnel, Classified information.

Accordingly, the CIA is amending 32 CFR part 1909 as follows:

PART 1909—ACCESS BY HISTORICAL RESEARCHERS AND CERTAIN FORMER GOVERNMENT PERSONNEL PURSUANT TO SEC. 4.4 OF EXECUTIVE ORDER 13526

■ 1. The authority citation for part 1909 is revised to read as follows:

Authority: Executive Order 13526, 75 FR 707, 3 CFR 2010 Comp., p. 298–327 (or successor Orders).

■ 2. Revise the part heading to read as set forth above.

■ 3. Revise § 1909.01 to read as follows:

§ 1909.01 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement section 4.4 of E.O. 13526 (or successor Orders); the CIA Information Act of 1984, as amended (50 U.S.C. 431); section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and section 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g).

(b) *Purpose.* This part prescribes procedures for:

(1) Requesting access to CIA records for purposes of historical research, or

(2) Requesting access to CIA records as a former Presidential or Vice Presidential appointee or designee.

■ 4. In § 1909.02, revise paragraphs (e), (g), (h), (i), (j), (k), (l), (m), (n), and add paragraphs (o) and (p) to read as follows:

§ 1909.02 Definitions.

* * * * *

(e) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the historical access program established pursuant to section 4.4 of the Order.

* * * * *

(g) *Director of Security* means the Agency official responsible for making all security and access approvals and for affecting the necessary secrecy, non-disclosure, and/or pre-publication agreements as may be required.

(h) *Director, Information Management Services* means the Senior Agency Official as defined in Section 6.1(mm) of the Order.

(i) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f).

(j) *Former Presidential or Vice Presidential appointee or designee* means any person who has previously occupied a senior policy-making position in the executive branch of the United States Government to which they were appointed by the current or a former President or Vice President.

(k) *Historical researcher* means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a research project leading to publication (or any similar activity such as academic course development) reasonably intended to increase the understanding of the American public into the operations and activities of the United States government. The term includes anyone serving as a research associate of a former Presidential or Vice Presidential appointee or designee.

(l) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government.

(m) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue.

(n) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated classification authority for the information at issue in accordance with the provisions of the Order.

(o) *Agency Release Panel (ARP)* refers to the Agency's forum for reviewing information review and release policy, the adequacy of resources available to all Agency declassification and release programs, and hearing requests in accordance with this section.

(p) *The Order* means Executive Order 13526 of December 29, 2009 and published at 75 FR 707 (or successor Orders).

■ 5. Revise § 1909.04 to read as follows:

§ 1909.04 Suggestions and complaints.

The Agency welcomes suggestions, comments, or complaints with regard to its administration of the historical access program established pursuant to Executive Order 13526. Members of the public shall address all such communications to the CIA Information and Privacy Coordinator. The Agency will respond as determined feasible and appropriate under the circumstances.

■ 6. In § 1909.11, revise paragraphs (a)(2) and (b) to read as follows:

§ 1909.11 Requirements as to who may apply.

(a) * * *

(2) *Additional considerations.* In light of the very limited Agency resources, it is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 13526, and where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

(b) *Former Presidential and Vice Presidential appointees or designees.* Any former Presidential or Vice Presidential appointee or designee as defined herein may also submit a request to be given access to any items which they originated, reviewed, signed, or received while serving in that capacity. Such appointees may also request approval for a research associate but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of the Agency. Requests from appointees shall be in writing to the Coordinator and shall identify the records of interest.

■ 7. Revise § 1909.12 to read as follows:

§ 1909.12 Designation of authority to grant requests.

(a) *The Agency Release Panel (ARP)* is designated to hear requests and shall issue the final Agency decision granting requests for access by historical researchers and access by former Presidential and Vice Presidential appointees and designees under Executive Order 13526 (or successor Orders) and these regulations.

(b) *ARP Membership.* The ARP is chaired by the Chief, Information Review and Release Group, Information Management Services, and composed of the Information Review Officers from the various Directorates and the D/CIA areas, as well as the representatives of the various release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP.

■ 8. Revise § 1909.14, revise the section heading and paragraph (a) to read as follows:

§ 1909.14. Determinations on requests for access by Historical Researchers.

Required determinations. The Agency shall make the following determinations in writing:

(a) That a serious professional or scholarly research project by the requester is contemplated;

(b) That such access is clearly consistent with the interests of national security;

(c) That a non-disclosure agreement has been or will be executed by the requester (and research associate, if any) and other appropriate steps are taken to assure that classified information will not be disclosed or otherwise compromised;

(d) That a pre-publication agreement has been or will be executed by the requester (and research associate, if any) which provides for a review of notes and any resulting manuscript;

(e) That the information requested be reasonably accessible and can be located and compiled with a reasonable effort;

(f) That it is reasonably expected that substantial and substantive government documents and/or information will be amenable to declassification and release and/or publication;

(g) That sufficient resources are available for the administrative support of the historical researcher given current requirements; and

(h) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 13526.

§ 1909.15 [Removed]

■ 9. Remove § 1909.15.

§ 1909.16 [Amended]

■ 10. Revise § 1909.16 to read as follows:

§ 1909.16 Action by Agency Release Panel (ARP).

The ARP shall meet on a regular schedule and may take action when a simple majority of the total membership is present. Issues shall be decided by a majority of the members present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the Executive Secretary of the ARP, refer such matters to the Director, Information Management Services (D/IMS) for decision. In the event of a disagreement with any decision by D/IMS, Directorate heads may appeal to the Associate Deputy Director, CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

■ 11. Revise § 1909.17 as follows:

§ 1909.17 Notification of decision.

The Executive Secretary shall inform the requester of the final Agency decision and, if favorable, shall manage the access for such period as deemed required but in no event for more than two years unless renewed by the Panel or Board in accordance with the requirements of this Part.

■ 12. Revise § 1909.18 to read as follows:

§ 1909.18 Termination of access.

The Coordinator shall cancel any authorization and deny any further access whenever the Director of Security cancels the security clearance of a requester (or research associate, if any); or whenever the Agency Release Panel determines that continued access would no longer be consistent with the requirements of this Part; or at the conclusion of the authorized period of up to two years.

Dated: August 10, 2011.

Joseph W. Lambert,

Director, Information Management Services.

[FR Doc. 2011–21576 Filed 9–22–11; 8:45 am]

BILLING CODE 6310–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0788]

Drawbridge Operation Regulations; Hutchinson River, Bronx, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Amtrak Pelham Bay Railroad Bridge at mile 0.5, across the Hutchinson River at the Bronx, New York. The deviation is necessary to facilitate scheduled maintenance at the bridge. This deviation allows the bridge to remain in the closed position for two days followed by a two hour advance notice requirement for 20 days.

DATES: This deviation is effective from September 6, 2011 through September 29, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0788 and are available online at *http://www.regulations.gov,* inserting USCG–2011–0788 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil,* or telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Amtrak Pelham Bay Railroad Bridge, across the Hutchinson River at mile 0.5, at the Bronx, New York, has a vertical clearance in the closed position of 8 feet at mean high water and 15 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.793.

The waterway users are mostly commercial operators.

The owner of the bridge, National Railroad Passenger Company (Amtrak), requested a temporary deviation from the regulations to facilitate scheduled maintenance, replace track ties, at bridge.

Under this temporary deviation the Amtrak Pelham Bay Railroad Bridge may remain in the closed position between September 6, 2011 and September 8, 2011, and from September 9, 2011 through September 29, 2011, a two hour advance notice shall be required for bridge openings. Vessels that can pass under the bridge in the closed position may do so at any time.

The commercial users were notified. No objections were received.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 6, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–24417 Filed 9–22–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2011–OS–0010]

RIN 1894–AA03

State Fiscal Stabilization Fund Program

AGENCY: Department of Education.

ACTION: Interim final requirement; request for comments.

SUMMARY: On November 12, 2009, the Secretary of Education (Secretary) published in the **Federal Register** a notice of final requirements, definitions, and approval criteria for the State Fiscal Stabilization Fund (SFSF) program (November 2009 Notice). In that notice, the Secretary established September 30, 2011 as the deadline by which States had to collect and publicly report data and other information on various SFSF indicators and descriptors. Since publication of the November 2009 notice, States have faced many challenges and competing priorities in trying to meet the requirements of some of the SFSF indicators by the September 30, 2011 deadline. As a result, a number of States will be unable to comply fully with the SFSF requirements by the September 30, 2011 deadline. Accordingly, in this interim final requirement, the Secretary extends that deadline to January 31, 2012.

DATES: This interim final requirement is effective September 23, 2011. We must

receive your comments on or before October 24, 2011.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term ''State Fiscal Stabilization Fund—Interim Final Requirement'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about the interim final requirement, address them to Office of the Deputy Secretary (Attention: State Fiscal Stabilization Fund Interim Final Requirement), U.S. Department of Education, 400 Maryland Avenue, SW., room 7E214, Washington, DC 20202–6200.
- *Privacy Note:* The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: James Butler, State Fiscal Stabilization Fund Program, U.S. Department of Education, 400 Maryland Ave., SW., room 7E214, Washington, DC 20202–0008. Telephone: (202) 260–9737 or by e-mail: *SFSFcomments@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this interim final requirement to assist us in complying with the specific requirements of Executive Order 12866 and Executive Order 13563 and their overall requirement of reducing regulatory burden that might result from this interim final requirement.

During and after the comment period, you may inspect all public comments about this regulatory action by accessing Regulations.gov. You may also inspect the public comments in person in room 7E214, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

Section 14005(d) of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA) requires a State receiving funds under the SFSF program to provide assurances in four key areas of education reform:

(1) Achieving equity in teacher distribution, (2) improving collection and use of data, (3) standards and assessments, and (4) supporting struggling schools. In the November 2009 Notice (74 FR 58436), we established specific data and information requirements (assurance indicators and descriptors) that a State must meet with respect to the statutory assurances. We also established specific requirements for the plans that a State had to submit as part of its application for the second phase of funding under the SFSF program, describing the steps it would take to collect and report the required data and other information. In addition, we established September 30, 2011 as the deadline by which States must meet the requirements of these indicators and descriptors.

States are facing many challenges and competing priorities in trying to meet the requirements of some of the SFSF indicators by the September 30, 2011 deadline. For example, during the Department's ongoing program monitoring, States are expressing concerns about their ability to fully develop and implement a statewide longitudinal data system (SLDS) under Indicator (b)(1) by this deadline. Specifically, during its spring 2011 review of each State's Amended Application for Funding Under the State Fiscal Stabilization Fund Program, the Department found that many States still have not fully incorporated the following elements into their SLDS: (1) Student-level transcript information, including data on courses completed and grades earned (Element 9); (2) information regarding the extent to which students transition successfully from secondary school to postsecondary education, including whether students enroll in remedial coursework (Element 11); and (3) other information determined necessary to address alignment and adequate preparation for success in postsecondary education (Element 12). A number of States also are raising concerns about the challenges in collecting and publicly reporting student enrollment data for Indicator (c)(11). In its recent review of the SFSF amended applications, the Department found that 43 States indicated that they did not have the capacity to collect and publicly report those data. Further, most States reported in their amended SFSF application that they do not yet have the capacity to collect and publicly report the course completion data required under Indicator (c)(12). Therefore, the Department is extending to January 31, 2012 the deadline by which a State must comply with the requirements under any of the SFSF indicators and descriptors. The extension of the deadline to January 31, 2012 is automatic, and a State does not have to submit a request to receive this extension.

In a notice of proposed revisions to certain data collection and reporting requirements, and proposed priority published elsewhere in this issue of the **Federal Register**, the Department is proposing to further extend, to December 31, 2012, the deadline by which a State must comply with the requirements of Indicators (b)(1), (c)(11), and (c)(12) because the requirements under these indicators are particularly challenging. To receive an extension to December 31, 2012 for these specific indicators, the Department is proposing that the State submit a request that includes the information proposed in notice of proposed revisions to certain data collection and reporting requirements, and proposed priority.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. However, we are waiving the notice-and-comment rulemaking requirements under the APA. Section

553(b) of the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Although these requirements are subject to the APA's notice-and-comment requirements, the Secretary has determined that it would be impracticable and contrary to the public interest to conduct notice-and-comment rulemaking.

As discussed under the heading ''Background,'' States are facing many challenges and competing priorities in trying to meet some of the SFSF collection and public reporting requirements by the September 30, 2011 deadline. As a result, the Department has concluded that it is appropriate to extend the deadline for the SFSF indicators and descriptors to January 31, 2012. It is impracticable and contrary to the public interest to extend the September 30, 2011 deadline through notice-and-comment rulemaking given the limited amount of time remaining before this deadline. This interim final requirement will provide those States desiring additional time to meet the requirements with an extension of the deadline. Absent the interim final requirement, a number of States will be unable to comply fully with the SFSF requirements. The Department believes that giving the States additional time to meet these requirements will not compromise their purpose, which is to provide transparency on the extent to which a State is implementing reform actions for which it has provided assurances.

Although the Department is adopting this extension on an interim final basis, the Department requests public comments on the extension. After consideration of public comments, the Secretary will publish a notice of final requirement concerning the deadline for compliance with the SFSF indicators and descriptors.

The APA also requires that a substantive rule be published at least 30 days before its effective date, unless the rule grants or recognizes an exemption or relieves a restriction. (5 U.S.C. 553(d)(1)). Because we are granting States an extension of the September 30, 2011 deadline, the 30-day delayed effective date is not required. Accordingly, this interim final requirement is effective on the day it is published.

Interim Final Requirement

For the reasons discussed previously, the Secretary amends the requirements established in the November 2009 Notice by extending the deadline by which a State must collect and publicly report data and other information on the SFSF indicators and descriptors from September 30, 2011 to January 31, 2012.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is significant and, therefore, subject to the requirements of the Executive order and review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an economically significant rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

It has been determined that this regulatory action is significant under section 3(f)(4) of the Executive order.

Summary of Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of the regulatory action to extend the current deadline by which a State must meet the requirements of the SFSF indicators and descriptors and have determined that the interim final requirement will not impose additional costs to grantees or the Federal government. Additionally, the Department has determined that this requirement does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

The Department is reinstating to December 15, 2011, the information collection under OMB Control Number 1810–0695 requiring States to collect and publicly report data and other information annually. The Department has analyzed the costs of complying with these requirements. Some of the costs will be minimal and others more significant. As an example of a requirement that results in minimal burden and cost, States are currently required to report annually, through ED*Facts* (the Department's centralized data collection and warehousing system), for the State as a whole and for each LEA, the number and percentage of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified. Indicator (a)(1) requires that they confirm the data they have reported, which should not be a time-consuming responsibility. As a second example, the requirement to confirm the approval status of the State's assessment system under section 1111(b)(3) of the ESEA, as determined by the Department, should also require minimal effort.

Other requirements impose significant new costs. We strongly believe that the benefits to the public of these requirements outweigh the State and local implementation costs. Specifically, the major benefit of these requirements, taken in their totality, is better and more publicly available information on the status of activities related to the reform areas identified in the authorizing statute for the SFSF program. As described in detail later in this section, research indicates or suggests that progress on each of the reforms will contribute to improved student outcomes. The provision of better information (on teacher qualifications, teacher and principal evaluation systems, State student longitudinal data systems, State standards and assessment systems, student success in high-school and postsecondary education, efforts to turn around persistently lowest-achieving schools, and charter school reforms) to policymakers, educators, parents, and other stakeholders will assist in their efforts to further the reforms. In addition, State reporting of these data will help the Department determine the impact of the unprecedented level of funding made available by the ARRA. Further, the data and plans that States submit will inform Federal education policy, including the upcoming reauthorization of the ESEA.

The following is a detailed analysis of the estimated costs of implementing the specific final requirements, followed by a discussion of the anticipated benefits. The costs of implementing specific paperwork-related requirements are also shown in the tables in the *Paperwork Reduction Act of 1995* section of this notice.

Distribution of Highly Qualified Teachers

Section 14005(d)(2) of the ARRA requires a State receiving funds under the SFSF program to assure, in the SFSF

program application, that it will address inequities in the distribution of highly qualified teachers. In response to this requirement, the Department is requiring States to confirm, for the State and for each LEA in the State, the number and percentage of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified. Because States will have previously submitted this information to the Department through the ED*Facts* system, we anticipate that the costs of complying with this requirement would be minimal. A State likely would need only to ensure that it had correctly aggregated and reported data received from its LEAs. The Department expects that each State would require one hour of staff time to complete this effort, at a cost of $30 per hour. For the 50 States, the District of Columbia, and Puerto Rico, the total estimated level of effort would be 52 hours at a cost of $1,560. In addition, the final requirements provide for States to indicate whether the State's Teacher Equity Plan (a part of the State's Highly Qualified Teacher Plan) has been updated to fully reflect the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers. The Department expects that this will require an hour of effort, for a total estimated burden of 52 hours at a cost of $1,560.

Teacher and Principal Evaluation Systems

Section 14005(d)(2) also requires States to take actions to improve teacher effectiveness. To accomplish that goal, States must first have a means of assessing teacher success. A limited number of States have implemented statewide teacher and principal evaluation systems, while in the other States the responsibility for evaluating teachers and principals rests with the LEAs or schools. Little is known about the design of these systems across the Nation, but the collection and reporting of additional information would create a resource that additional States and LEAs can draw on in building their own systems. The Department, therefore, is requiring States to collect and publicly report information about these evaluation systems.

Specifically, the Department is requiring that States describe, for each LEA in the State, the systems used to evaluate the performance of teachers and principals. Further, the Department requires States to indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers and principals include student achievement outcomes or student growth data as an evaluation criterion.

The level of effort required to respond to these requirements would likely vary depending on the types of teacher and principal evaluation systems in place in a given State or LEA. The Department believes that, if a system is in place at the State level, the response burden would be low, because the State will have the required information readily available. According to the National Council on Teacher Quality, 12 States require LEAs to use a State-developed instrument to evaluate teachers or to develop an equivalent instrument that must be approved by the State.[1] For these 12 States, the Department estimates that a total of 72 hours (6 hours per State) would be required to respond to these requirements, for a total cost, at $30 per hour, of $2,160. The 2,487 LEAs located in these States would not be involved in the response to these requirements.

In the 40 States that do not have statewide teacher and principal evaluation systems in place, the level of effort required would likely be significantly higher. Approximately half of these States have either already reported this information once or have completed more than half of the effort involved with reporting. The Department believes that these States would require significantly less effort than States that have completed less than half of the work involved with meeting these requirements. The Department estimates that each State that has completed more than half of the work associated with these requirements would need 120 hours to meet the requirements, and each State that has completed less than half of the work would require 360 hours to meet the requirements. Thus, the Department estimates that, on average, 240 hours would be required at the State level to develop and administer a survey of LEAs (including designing the survey instrument, disseminating it, providing training or other technical assistance to LEAs on completing the survey, collecting the data and other information, checking accuracy, and public reporting), which would amount to a total of 9,600 hours and a total estimated State cost of $288,000 (assuming, again, a cost per hour of $30). The 12,737 LEAs located in these States would bear the cost of collecting and reporting the data to their States.

For the purpose of the burden estimates in this section, the Department estimates that 75 percent of these LEAs (9,553) have centralized teacher and principal evaluation systems in place. For those LEAs, we estimate that 3 hours would be required to respond to these requirements. For the estimated 3,184 LEAs that do not have a centralized evaluation system in place, we estimate that 2 hours would be required because we expect that these systems are less complex than centralized systems. The Department, thus, estimates that LEAs would need to spend a total of 35,027 hours to respond to these proposed requirements at a total cost of $875,675, assuming a cost per hour of $25.

The Department is also requiring States to provide, for each LEA in the State whose teachers and principals receive performance ratings or levels through an evaluation system, the number and percentage of teachers and principals rated at each performance rating or level, as well as a description of how each LEA uses results from those systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal. Finally, the Department is requiring States to indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage of teachers rated at each performance rating or level are publicly reported for each school in the LEA. The Department expects that many LEAs that make this information publicly available will choose to do so on their pre-existing Web site; if any LEAs currently do not have Web sites, they may create a Web site or may publicly report this information in another easily accessible format.

We were unable to find nationally representative information on whether LEAs will have information on their teacher and principal evaluation systems readily available in a centralized database. The New Teacher Project (NTP),[2] which analyzed the teacher evaluation systems of a sample of 12 LEAs, found that of those 12 LEAs, only 4 tracked teacher evaluation results electronically. Although the NTP report examined only a small number of LEAs, which were not nationally representative, and the report was published in 2009, we base our cost estimates on this finding, as it is the only source of information available. Thus, we assume that 33 percent of LEAs will have information on the

[1] *State Teacher Policy Yearbook: 2009,* page 170. *http://www.nctq.org/stpy09/reports/stpy_national.pdf.*

[2] *See http://widgeteffect.org/downloads/TheWidgetEffect.pdf.*

teacher and principal evaluation results in a central database.[3] Applying this percentage to the estimated 12,040 LEAs that have in place a centralized system to evaluate teacher and principal performance (which includes the 2,487 LEAs in States with statewide systems, as well as the estimated 9,553 LEAs in other States that have their own local systems), the Department estimates that 3,973 LEAs would need to spend 3 hours each to respond to these requirements for a total burden of 11,919 hours and $297,975.

We estimate that each of the other 8,067 LEAs will require significantly more time to respond. According to the Digest of Education Statistics, there are approximately 3.2 million teachers and 90,470 principals in public elementary and secondary schools.[4] [5] Based on this figure, we estimate that an average LEA employs 210 teachers and 6 principals. Applying this number of teachers and principals to the estimated 8,067 LEAs nationwide that do not have this information electronically in a central system, we estimate that these LEAs will need to enter data for 1,694,070 teachers and 48,402 principals into their existing personnel systems. We estimate that LEAs could enter information for 6 individuals per hour, thus we estimate that these LEAs would have a combined burden of 290,412 hours at a cost of $7,260,300.

We further estimate that all 15,224 LEAs would each require 1 hour to describe how they use results from teacher and principal evaluation systems in decisions regarding teacher and principal development, compensation, promotion, retention, and removal.

The Department, therefore, estimates the total LEA burden for these requirements to be 317,555 hours across the Nation at an estimated total cost of $7,938,875 (assuming a cost per hour of $25).

States would then need to collect these data, most likely by including these items in the survey instrument that they will develop to respond to the other requirements in this section, and will then need to aggregate and publicly report the data on their Web site. Considering progress that States have made to date, we estimate that these activities will require 4 hours of effort per State, for a total burden of 208 hours at a cost of $6,240.

For more detailed estimates of costs for these requirements, please see the tables in the *Paperwork Reduction Act of 1995* section of this notice.

State Data Systems

Section 14005(d)(3) requires States to assure that they will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act. To track State progress in this reform area, the Department requires each State to indicate which of the 12 elements are included in the State's statewide longitudinal data system. The costs of reporting this information should be minimal. Moreover, most States are already reporting information on ten of the 12 elements to the Data Quality Campaign, a national effort to encourage State policymakers to use high-quality education data to improve student achievement, and to the Department as part of reporting for this program to date. The Department expects that States will be able to readily provide information on whether the two remaining elements are included in their data systems and that it should take little time for the States that have not been reporting to the Data Quality Campaign to provide information on their data systems. We, therefore, estimate that States would need only 2 hours to respond to this requirement, for a total level of effort of 104 hours at an estimated cost of $3,120.

The Department is also requiring that States report whether the State provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects in a manner that is timely and informs instructional programs. The Department believes that making such information available would help improve the quality of instruction and the quality of teacher evaluation and compensation systems. Under the State Plan section, we discuss the costs of developing systems for the provision of student growth data in all States. We are also requiring States to indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments. The costs of merely publicly reporting on whether a State currently provides this information to teachers should be minimal. We estimate that each State would spend one hour to publicly report this information, for a total level of effort of 52 hours at a cost of $1,560.

State Assessments

In response to the requirement in section 14005(d)(4)(A) of the ARRA that States enhance the quality of their student assessments, the Department requires that the States confirm certain existing data and other information and submit some new information about their assessment systems. Specifically, the Department requires each State to confirm the approval status, as determined by the Department, of the State's assessment system (with respect to reading/language arts, mathematics, and science assessments). In addition, States will confirm that their annual State Report Card (issued pursuant to the requirements of section 1111(h) of the ESEA) contains the most recent available State reading and mathematics NAEP results. The Department estimates that each State would require two hours to respond to these requirements, for a total cost of $3,120.

Section 14005(d)(4)(B) requires States to assure that they will administer valid and reliable assessments for children with disabilities and limited English proficient students. To measure State progress on this assurance, the Department requires States to: confirm whether the State has developed and implemented valid and reliable alternate assessments for students with disabilities that have been approved by the Department; confirm whether the State's alternative assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards; indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides students with disabilities to ensure their meaningful participation in State assessments; indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides limited English proficient students to ensure their meaningful participation in State assessments; and confirm whether the State provides native language versions of State assessments for limited English proficient students. To respond to these

[3] It is important to note that this study includes in its sample only medium-size and large LEAs and, therefore, that the actual percentage of LEAs with teacher and principal evaluation results in a central database may be lower than 33 percent. We also believe, however, that small LEAs with fewer teachers and principals would require less effort than a medium-size or large LEA to comply with these requirements.

[4] *See http://nces.ed.gov/programs/digest/d10/tables/dt10_004.asp?referrer=list.* The most recent data available is from 2008.

[5] *See http://nces.ed.gov/programs/digest/d10/tables/dt10_089.asp?referrer=list* . The most recent data available is for the 2007–08 school year.

five indicators, the Department estimates that the 50 States, the District of Columbia, and Puerto Rico would each require five hours, for a total cost of $7,800.

In addition, the Department requires that States confirm the number and percentage of students with disabilities and limited English proficient students who are included in State reading/language arts and mathematics assessments. The Department expects that each State would, on average, require one hour of staff time to complete this effort, at a cost of $30 per hour. The burden estimated for this requirement is minimal because the States will have already submitted this information to the Department through the ED*Facts* system. For the 50 States, the District of Columbia, and Puerto Rico, the total estimated level of effort would be 52 hours at a cost of $1,560.

High School and Postsecondary Success

Section 14005(d)(4)(C) of the ARRA requires States to assure that they take steps to improve their State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(A)(ii) of the COMPETES Act, which calls for States to identify and make any necessary changes to their secondary school graduation requirements, academic content standards, academic achievement standards, and the assessments students take preceding graduation from secondary school in order to align those requirements, standards, and assessments with the knowledge and skills necessary for success in academic credit-bearing coursework in postsecondary education, in the 21st century workforce, and in the Armed Forces without the need for remediation. Several of the indicators and descriptors with which a State must comply are aligned with this provision of the America COMPETES Act.

First, the Department requires each State to publicly report, for the State and each LEA and high school in the State and, at each of these levels, by student subgroup,[6] the number and percentage of students who graduate from high school as determined using the four-year adjusted cohort graduation rate. State efforts to comply with the Department's October 29, 2008 regulation requiring the use of a four-year adjusted cohort graduation rate in the determination of adequate yearly progress under Title I of the ESEA are now underway (see 34 CFR 200.19(b)(1)(i)). Some additional effort would be required to collect and report these data for all schools as the current regulations apply only to Title I schools.

Based on the Data Quality Campaign's 2010 survey of the 50 States and the District of Columbia, which found that all States have the capacity to calculate the National Governors Association longitudinal graduation rate,[7] the Department believes that most States are well-situated to collect and publicly report these data. In fulfillment of the requirement, the Department estimates that States would need to distribute to non-Title I LEAs the survey instrument they are using to collect this information from Title I LEAs and to input the data from these surveys. The Department believes the 25 States that have already met this requirement once and the 20 more that have reported completing more than half of the effort involved would require less effort than States that have completed less than half of the work involved with meeting this requirement. The Department estimates that each State that has completed more than half of the work associated with these requirements would need 2 hours to meet the requirements, and each State that has completed less than half of the work would require 8 hours to meet the requirements. Thus, the Department estimates that this would require an estimated average of approximately 3 hours per State. The new LEA burden to respond to this indicator would be limited to the approximately 1,053 LEAs that do not receive Title I funds.[8] The Department estimates that these LEAs would spend an average of 40 hours to respond to this indicator for a total LEA effort of 42,120 hours. The total estimated cost for LEAs is, therefore, $1,053,000.

In addition, the Department is requiring States to publicly report, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup, the number and percentage of students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in an IHE within 16 months of receiving a regular high school diploma and, of those students who enroll in a public IHE within the State, the number and percentage who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE. The requirements would entail considerable coordination among high schools, LEAs, SEAs, and IHEs. The Department expects that SEAs would have to develop a system to make this data collection and sharing possible, which they could at least partially achieve by establishing a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the COMPETES Act. As discussed earlier, section 14005(d)(3) of the ARRA requires States to assure, in their SFSF application, that they will establish such a data system.

With respect to the requirement on publicly reporting postsecondary enrollment, the Department expects that LEAs will need to enter, into their State's statewide longitudinal data system, data on each high school graduate's plans after high school, including the IHE where the student intends to enroll, if applicable. Based on data from the *Digest of Education Statistics,* the Department estimates that approximately 2,820,000 students who graduated from public high schools enrolled in IHEs as first-time freshmen in fall 2007.[9] Holding that number constant, the Department estimates that LEAs will be able to enter data for these students at a pace of 20 students per hour which will result in a total level of LEA effort of 141,000 hours at a cost of $3,525,000.

The State will then likely need to request that each IHE in the State confirm a student's enrollment, using the statewide longitudinal data system to obtain data on students who intended to enroll within the State. Based on data from the 2008 Integrated Postsecondary Education Data System (IPEDS), Spring 2009,[10] the Department estimates that 2,284,200 first-time freshmen (81 percent of the estimated number of all first-time freshmen who graduate from public high schools) enroll in degree-granting IHEs in their home State. The Department estimates that IHEs will be able to confirm enrollment for 20 students per hour, for a total of 114,210 hours of IHE effort at a total cost of

[6] The student subgroups include: economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, and students with disabilities.

[7] *http://www.dataqualitycampaign.org/stateanalysis/executive_summary/.*

[8] According to data States submitted to the Department, there are a total of 15,224 LEAs across the Nation, 14,171 of which receive Title I, Part A funds.

[9] According to the *Digest of Education Statistics,* 2008, approximately 3 million first-time freshmen enrolled in IHEs in fall 2007. *See http://nces.ed.gov/programs/digest/d09/tables/dt09_199.asp.* Also according to the *Digest,* in fall 2005, 859,800 students were enrolled in private secondary schools. At that time, enrollment in public secondary schools was 14,908,126. Extrapolating from those data, the Department estimates that 94 percent of all first-time postsecondary students graduated from public schools. See *http://nces.ed.gov/programs/digest/d08/tables/dt08_058.asp.*

[10] *http://nces.ed.gov/programs/digest/d09/tables/dt09_223.asp.*

$2,855,250 (assuming a cost of $25 per hour).[11]

States will also likely need to request that IHEs outside the State confirm the enrollment of students who indicated that they would enroll in those institutions. Again, based on data from the 2008 IPEDS, Spring 2009, the Department estimates that 535,800 students who graduate from public high schools each year enroll in IHEs in States outside their home State. The Department estimates that it will take States 30 minutes per student to complete this process, including contacting out-of-State IHEs, obtaining the necessary information from them, and including data on those students in their public reports. This element of the requirement, therefore, will result in a national total of 267,900 hours of State effort at a total cost of $8,037,000. As with students who enroll in IHEs in their home State, the Department estimates that IHEs will be able to confirm enrollment for 20 students per hour, for a total of 26,790 hours of IHE effort at a total cost of $669,750.

Finally, to meet the requirement that they publicly report the number of students who enroll in IHEs, States will need to aggregate the data received from all IHEs and will then need to run analyses and publicly report the data for the State, for each LEA, for each high school and, at each of these levels, by student subgroup. The Department estimates that each State will need 40 hours to conduct these analyses and publicly report these data, for a total State burden of 2,080 hours at a cost of $62,400.

The requirement that States publicly report the number of students enrolling in a public, in-State IHE who complete at least one year's worth of college credit applicable toward a degree within two years of enrollment at the IHE will also entail a collaborative process between SEAs and IHEs. Again, based on data from the *Digest of Education Statistics,* the Department estimates that 1,691,678 first-time freshmen enroll in public, degree-granting IHEs in their home State.[12] Further, the Department estimates that, once a State has established a system for the collection and reporting of these data, IHEs will be able to enter data for 20 students an hour; thus, the total estimated level of effort to respond to this requirement will be approximately 84,584 hours of IHE effort at an estimated cost of $2,114,600, assuming a cost of $25 per hour.

Finally, as with the previous indicator, States will need to aggregate the data received from all IHEs and will then need to run analyses and publicly report the data for the State, LEA, and school levels and at each of these levels, by student subgroup. The Department estimates that each State will need 40 hours to conduct these analyses and publicly report these data, for a total State burden of 2,080 hours at a cost of $62,400.

Supporting Struggling Schools

A key goal of the ARRA is to ensure that States and LEAs provide targeted, intensive support and effective interventions to turn around the persistently lowest-achieving schools in the State. Section 14005(d)(5) requires States to ensure compliance with the Title I requirements in this area. To track State progress, the Department is requiring States to provide, for each LEA in the State and aggregated at the State level, the number and percentage of schools in improvement, corrective action, or restructuring that have made progress on State assessments in reading/language arts and mathematics in the last year, and, for the State, in the ''all students'' category and for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA), and, of the Title I schools in improvement, corrective action, or restructuring, the number and identity of the persistently lowest-achieving schools as defined by the State. The State is also required to provide the definition that it uses to identify its ''persistently lowest-achieving schools.'' States are also required to publicly report the number and identity of their Title I schools in improvement, corrective action, or restructuring that are identified as persistently lowest-achieving and, of those schools, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.

The Department believes that States will already have available the data needed to report on the indicators related to the total number and percentage of schools in improvement, corrective action, or restructuring that have made progress on State assessments, although they might need to run new analyses of the data. However, the Department expects that States will have to collect new data on the schools in improvement, corrective action, or restructuring (in general and in the persistently lowest-achieving schools) that have been turned around, restarted, closed, or transformed. (In addition, the State will need to define the term ''persistently lowest-achieving schools.'') We estimate that this data collection will entail two hours of effort in each of the 4,729 LEAs (the number of LEAs that, according to data reported to ED*Facts,* had at least one school in improvement, corrective action, or restructuring in the 2010–11 school year). As a result, the Department estimates that the total LEA burden for this requirement will be 9,458 hours at a cost of $236,450. States will then need to aggregate these data, in addition to the effort they will spend responding to the other indicators that relate to struggling schools. Approximately 40 States have either already submitted this information once or have completed more than 50 percent of the effort to meet the requirement. As a result, the Department estimates that these States will require less effort than the other 12 to meet this reporting requirement. The Department estimates that, on average, each State will require 14 hours of effort to respond to these requirements, for a total cost of $21,840.

In addition, the Department is requiring States to provide, for the State, the number and identity of the secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools, and, of these schools, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year. The Department expects that some, but not all, States have the data required to determine the identity of secondary schools that are eligible for, but do not receive, Title I funds, but that they may have to run new analyses of the data to

[11] Note that a table in the Paperwork Reduction Act of 1995 section of this notice provides the burden estimates by IHE, but that this narrative provides national estimates using the total number of students included in the data requirement.

[12] According to the *Digest of Education Statistics,* 2009, 2,240,414 first-time freshmen enrolled in public, degree-granting IHEs in fall 2008, which represented 74 percent of all first-time freshmen. *See http://nces.ed.gov/programs/digest/d09/tables/dt09_199.asp.* Also in fall 2008, 2,109,931 freshmen who graduated from high school within the last 12 months attended degree-granting IHEs in their home State, which represented 81 percent of all freshmen. *See http://nces.ed.gov/programs/digest/d09/tables/dt09_223.asp. 1.* An estimate of the number of first-time freshmen enrolled in public, degree-granting IHEs in their home State can be derived two ways. Applying the percentage of first-time freshmen attending public degree-granting IHEs to the number of first-time freshmen attending an IHE in their home State yields an estimate of 1,508,484, and applying the percentage of first-time freshmen attending an IHE in their home State to the number of first-time freshmen attending public degree-granting IHEs yields an estimate of 2,169,077. For the purposes of this estimate, the Department chooses the midpoint of these figures, which is 1,838,780. Applying the estimate (described earlier) that 94 percent of all first-time postsecondary students graduated from public schools, the Department estimates that 1,691,678 public high school graduates enroll in public degree-granting IHEs in their home State.

determine which of these schools have been turned around, restarted, closed, or transformed in the last year. Other States may have to include an item in the LEA survey that they will be distributing to respond to several of these requirements. Based on State efforts to report on these two indicators to date, the Department estimates that each State will require an average of 8 hours of effort to respond to these two requirements, for a total cost of $12,480. We further estimate that the 4,729 affected LEAs will need a total of 4 hours to respond to these two survey items.

Charter Schools

The Department believes that the creation and maintenance of high-quality charter schools is a key strategy for promoting successful models of school reform. To determine the level of State effort in this area, the Department is requiring States to provide, at the State level and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law and the number that are currently operating. We expect that this information will be readily available and that States will need only a total of one hour to respond to these two requirements.

In addition, the Department will require States to provide, for the State and for each LEA in the State that operates charter schools, the number and percentage (including numerator and denominator) of charter schools that have made progress on State assessments in reading/language arts and mathematics in the last year. Finally, the Department is requiring States to provide, for the State and for each LEA in the State that operates charter schools, the number and identity of charter schools that have closed (including schools that were not reauthorized to operate) within each of the last five years and to indicate, for each such school, whether the closure was for financial, enrollment, academic, or other reasons. The Department believes that SEAs will likely also have this information readily available (although some may need to obtain additional information from their LEAs) and will need eight hours to publicly report it. The Department assumes that the effort to respond to these requirements will be limited to the 42 States (including the District of Columbia and Puerto Rico) that allow charter schools. The Department thus estimates that the State effort required to respond to these indicators will total 336 hours at a cost of $10,080.

Total Estimated Costs

The Department estimates that the total burden of responding to these requirements will be 287,424 hours and $8,622,720 for SEAs, 564,076 hours and $14,101,900 for LEAs, and 225,584 hours and $5,639,600 for IHEs, for a total burden of 1,077,084 hours at a cost of $28,364,220.

Benefits

The principal benefits of the requirements are those resulting from the reporting and public availability of information on each State's progress in the four reform areas described in the ARRA. The Department believes that the information gathered and reported as a result of these requirements will improve public accountability for performance, help States, LEAs, and schools learn from one another and make improvements in what they are doing, and inform the ESEA reauthorization process.

A second major benefit is that better public information on State and local progress in the four reform areas will likely spur more rapid progress on those reforms, because States and LEAs that appear to be lagging in one or more areas may see a need to redouble their efforts. The Department believes that more rapid progress on the essential educational reforms will have major benefits nationally, and that these reforms have the potential to drive dramatic improvements in student outcomes.

For example, statewide longitudinal data systems are essential tools in advancing education reform. With these systems in place, States can use this data to evaluate the effectiveness of specific interventions, schools, principals, and teachers by tracking individual student achievement, high school graduation, and postsecondary enrollment and credit. They can, for example, track the academic achievement of individual students over time, even if those students change schools within the State during the course of their education. By analyzing this information, decision-makers can determine if a student's ''achievement trajectory'' will result in his or her being college- or career-ready and can better target services based on the student's academic needs.[13]

The Department also believes that States' implementation of these requirements will lead to more widespread development and implementation of better teacher and principal evaluation systems. In particular, the availability of accurate, complete, and valid achievement data is essential to implementing better systems of teacher and principal evaluation. Value-added models, for example, can provide an objective estimate of the impact of teachers on student learning and achievement.[14] Further, they can be used by schools, LEAs, or States to reward excellence in teaching or school leadership, as a component of performance-based compensation systems, or to identify schools in need of improvement or teachers who may require additional training or professional development.[15]

The Department believes that the requirements will have additional benefits to the extent that they provide States with incentives to address inequities in the distribution of effective teachers, improve the quality of State assessments, and undergo intensive efforts to improve struggling schools. Numerous studies document the substantial impact of improved teaching on educational outcomes and the need to take action to turn around the lowest-performing schools, including high schools (and their feeder middle schools) that enroll a disproportionate number of the students who fail to complete a high school education and receive a regular high school diploma. The Department believes that more widespread adoption of these reforms would have a significant, positive impact on student achievement.

Although these benefits are not easily quantified, the Department believes they will exceed the projected costs.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)).

[13] For example, see *http://dataqualitycampaign.org/files/publications-dqc_academic_growth-100908.pdf* and *http://www.dataqualitycampaign.org/files/Meetings-DQC_Quarterly_Issue_Brief_092506.pdf*.

[14] *See:* Braun, Henry I. *Using Student Progress To Evaluate Teachers: A Primer on Value-Added Models.* Educational Testing Service, Policy Information Center, 2005; Marsh, Julie A.; Pane, John F.; Hamilton, Laura S. *Making Sense of Data-Driven Decision Making in Education: Evidence from Recent RAND Research.* Santa Monica, CA: RAND Corporation, 2006; and Sanders, William L. ''Value-Added Assessment from Student Achievement Data: Opportunities and Hurdles.'' Journal of Personnel Evaluation in Education, Vol. 14, No. 4, p. 329–339, 2000.

[15] Center for Educator Compensation Reform: *http://cecr.ed.gov/*.

This helps ensure that: The public understands the Department's collection instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

This Interim Final Requirement contains an information collection requirement previously approved under OMB control number 1810–0695. Under the PRA the Department has submitted a copy of this section to OMB for its review.

A Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final requirement we will display the control number assigned by OMB to any information collection requirement in this IFR and adopted in the final requirement.

In the SFSF Phase 2 application, the Department established indicators and descriptors that required States to collect and publicly report data and other information annually. The Office of Management and Budget approved that information collection under an emergency review (OMB Control Number 1810–0695). The Department's authority under that information collection has expired. Therefore, the Department is reinstating to December 15, 2011 the information collection under OMB Control Number 1810–0695.

A description of the specific information collection requirements is provided in the following tables along with estimates of the annual recordkeeping burden for these requirements. Included in an estimate is the time for collecting and tracking data, maintaining records, calculations, and reporting. The first table presents the estimated indicators burden for SEAs, the second table presents the estimated indicators burden for LEAs, and the third table presents the estimated indicators burden for IHEs.

State Fiscal Stabilization Fund Indicators and Descriptors

I. ASSURANCE INDICATORS AND DESCRIPTORS BURDEN HOURS/COST FOR SEAS

Citation	Description	Number of respondents	Average hours per response*	Total hours	Total cost (total hours × $30.00)
Indicator (a)(1)	Confirm, for the State, the number and percentage (including numerator and denominator) of core academic courses taught, in the highest-poverty and lowest-poverty schools, by teachers who are highly qualified consistent with section 9101(23) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).	52	1	52	$1,560
Indicator (a)(2)	Confirm whether the State's Teacher Equity Plan (as part of the State's Highly Qualified Teacher Plan) fully reflects the steps the State is currently taking to ensure that students from low-income families and minority students are not taught at higher rates than other students by inexperienced, unqualified, or out-of-field teachers (as required in section 1111(b)(8)(C) of the ESEA).	52	1	52	1,560
Descriptor (a)(1) ...	Describe, for each local educational agency (LEA) in the State, the systems used to evaluate the performance of teachers and the use of results from those systems in decisions regarding teacher development, compensation, promotion, retention, and removal.	52	118	6,158	184,740
Indicator (a)(3)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion.	52	4	208	6,240
Indicator (a)(4)	Provide, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level.	52	2	104	3,120
Indicator (a)(5)	Indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level are publicly reported for each school in the LEA.	52	1	52	1,560
Descriptor (a)(2) ...	Describe, for each LEA in the State, the systems used to evaluate the performance of principals and the use of results from those systems in decisions regarding principal development, compensation, promotion, retention, and removal.	52	118	6,158	184,740

I. ASSURANCE INDICATORS AND DESCRIPTORS BURDEN HOURS/COST FOR SEAS—Continued

Citation	Description	Number of respondents	Average hours per response*	Total hours	Total cost (total hours × $30.00)
Indicator (a)(6)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of principals include student achievement outcomes or student growth data as an evaluation criterion.	52	4	208	6,240
Indicator (a)(7)	Provide, for each LEA in the State whose principals receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of principals rated at each performance rating or level.	52	1	52	1,560
Indicator (b)(1)	Indicate which of the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act are included in the State's statewide longitudinal data system.	52	2	104	3,120
Indicator (b)(2)	Indicate whether the State provides student growth data on their current students and the students they taught in the previous year to, at a minimum, teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects, in a manner that is timely and informs instructional programs.	52	.5	26	780
Indicator (b)(3)	Indicate whether the State provides teachers of reading/language arts and mathematics in grades in which the State administers assessments in those subjects with reports of individual teacher impact on student achievement on those assessments.	52	.5	26	780
Indicator (c)(1)	Confirm the approval status, as determined by the Department, of the State's assessment system under section 1111(b)(3) of the ESEA with respect to reading/language arts, mathematics, and science assessments.	52	1	52	1,560
Indicator (c)(2)	Confirm whether the State has developed and implemented valid and reliable alternate assessments for students with disabilities that are approved by the Department.	52	1	52	1,560
Indicator (c)(3)	Confirm whether the State's alternate assessments for students with disabilities, if approved by the Department, are based on grade-level, modified, or alternate academic achievement standards.	52	1	52	1,560
Indicator (c)(4)	Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides students with disabilities to ensure their meaningful participation in State assessments.	52	1	52	1,560
Indicator (c)(5)	Confirm the number and percentage (including numerator and denominator) of students with disabilities who are included in State reading/language arts and mathematics assessments.	52	.5	26	780
Indicator (c)(6)	Indicate whether the State has completed, within the last two years, an analysis of the appropriateness and effectiveness of the accommodations it provides limited English proficient students to ensure their meaningful participation in State assessments.	52	1	52	1,560
Indicator (c)(7)	Confirm whether the State provides native language versions of State assessments for limited English proficient students that are approved by the Department.	52	1	52	1,560
Indicator (c)(8)	Confirm the number and percentage (including numerator and denominator) of limited English proficient students who are included in State reading/language arts and mathematics assessments.	52	.5	26	780
Indicator (c)(9)	Confirm that the State's annual State Report Card (under section 1111(h)(1) of the ESEA) contains the most recent available State reading and mathematics National Assessment of Educational Progress (NAEP) results as required by 34 CFR 200.11(c).	52	1	52	1,560

I. ASSURANCE INDICATORS AND DESCRIPTORS BURDEN HOURS/COST FOR SEAS—Continued

Citation	Description	Number of respondents	Average hours per response*	Total hours	Total cost (total hours × $30.00)
Indicator (c)(10)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), the number and percentage (including numerator and denominator) of students who graduate from high school using a four-year adjusted cohort graduation rate as required by 34 CFR 200.19(b)(1)(i).	52	3	156	4,680
Indicator (c)(11)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage (including numerator and denominator) who enroll in an institution of Higher education (IHE) (as defined in section 101(a) of the Higher Education Act of 1965, as amended (HEA)) within 16 months of receiving a regular high school diploma.	52	5,192	269,980	8,099,400
Indicator (c)(12)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.	52	40	2,080	62,400
Indicator (d)(1)	Provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on the State assessments in reading/language arts and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress (as defined in this notice) on State assessments in reading/language arts in the last year.	52	5	260	7,800
Indicator (d)(2)	Provide, for the State, the average statewide school gain in the ''all students'' category and the average statewide school gain for each student subgroup (as under section 1111(b)(2)(C)(v) of the ESEA) on State assessments in mathematics and for the State and for each LEA in the State, the number and percentage (including numerator and denominator) of Title I schools in improvement, corrective action, or restructuring that have made progress on State assessments in mathematics in the last year.	52	5	260	7,800
Descriptor (d)(1) ...	Provide the definition of ''persistently lowest-achieving schools'' (consistent with the requirements for defining this term set forth in this notice) that the State uses to identify such schools.	52	1	52	1,560
Indicator (d)(3)	Provide, for the State, the number and identity of the schools that are Title I schools in improvement, corrective action, or restructuring, that are identified as persistently lowest-achieving schools.	52	2	104	3,120
Indicator (d)(4)	Provide, for the State, of the persistently lowest-achieving schools that are Title I schools in improvement, corrective action, or restructuring, the number and identity of those schools that have been turned around, restarted, closed, or transformed (as defined in this notice) in the last year.	52	1	52	1,560

I. ASSURANCE INDICATORS AND DESCRIPTORS BURDEN HOURS/COST FOR SEAS—Continued

Citation	Description	Number of respondents	Average hours per response*	Total hours	Total cost (total hours × $30.00)
Indicator (d)(5)	Provide, for the State, the number and identity of the schools that are secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools.	52	4	208	6,240
Indicator (d)(6)	Provide, for the State, of the persistently lowest-achieving schools that are secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of those schools that have been turned around, restarted, closed, or transformed in the last year.	52	4	208	6,240
Indicator (d)(7)	Provide, for the State and, if applicable, for each LEA in the State, the number of charter schools that are currently permitted to operate under State law.	52	.5	26	780
Indicator (d)(8)	Confirm, for the State and for each LEA in the State that operates charter schools, the number of charter schools currently operating.	52	.5	26	780
Indicator (d)(9)	Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in reading/language arts in the last year.	42	2	84	2,520
Indicator (d)(10)	Provide, for the State and for each LEA in the State that operates charter schools, the number and percentage of charter schools that have made progress on State assessments in mathematics in the last year.	42	2	84	2,520
Indicator (d)(11)	Provide, for the State and for each LEA in the State that operates charter schools, the number and identity of charter schools that have closed (including schools that were not reauthorized to operate) within each of the last five years.	42	2	84	2,520
Indicator (d)(12)	Indicate, for each charter school that has closed (including a school that was not reauthorized to operate) within each of the last five years, whether the closure of the school was for financial, enrollment, academic, or other reasons.	42	2	84	2,520

* Figures in this column may reflect rounding.

II. ASSURANCE INDICATORS AND DESCRIPTORS BURDEN HOURS/COST FOR LEAS

Citation	Description	Number of respondents	Average hours per response*	Total hours	Total cost (total hours × $30.00)
Descriptor (a)(1) ..	Describe, for each LEA in the State, the systems used to evaluate the performance of teachers and the use of results from those systems in decisions regarding teacher development, compensation, promotion, retention, and removal.	15,224	1.78	27,114	677,850
Indicator (a)(3)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of teachers include student achievement outcomes or student growth data as an evaluation criterion.	12,737	.1	850	21,250
Indicator (a)(4)	Provide, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level.	12,040	23.7	285,000	7,125,000
Indicator (a)(5)	Indicate, for each LEA in the State whose teachers receive performance ratings or levels through an evaluation system, whether the number and percentage (including numerator and denominator) of teachers rated at each performance rating or level are publicly reported for each school in the LEA.	12,040	.5	5,955	148,875
Descriptor (a)(2) ..	Describe, for each LEA in the State, the systems used to evaluate the performance of principals and the use of results from those systems in decisions regarding principal development, compensation, promotion, retention, and removal.	15,224	1.78	27,113	677,825

II. ASSURANCE INDICATORS AND DESCRIPTORS BURDEN HOURS/COST FOR LEAS—Continued

Citation	Description	Number of respondents	Average hours per response*	Total hours	Total cost (total hours × $30.00)
Indicator (a)(6)	Indicate, for each LEA in the State, whether the systems used to evaluate the performance of principals include student achievement outcomes or student growth data as an evaluation criterion.	12,737	.1	850	21,250
Indicator (a)(7)	Provide, for each LEA in the State whose principals receive performance ratings or levels through an evaluation system, the number and percentage (including numerator and denominator) of principals rated at each performance rating or level.	12,040	.47	5,700	142,500
Indicator (c)(10) ...	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), the number and percentage (including numerator and denominator) of students who graduate from high school using a four-year adjusted cohort graduation rate as required by 34 CFR 200.19(b)(1)(i).	1,053	40	42,120	1,053,000
Indicator (c)(11) ...	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage (including numerator and denominator) who enroll in an IHE (as defined in section 101(a) of the HEA) within 16 months of receiving a regular high school diploma.	15,224	9.26	141,000	3,525,000
Indicator (d)(4)	Provide, for the State, of the persistently lowest-achieving Title I schools in improvement, corrective action, or restructuring, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.	4,729	2	9,458	236,450
Indicator (d)(5)	Provide, for the State, the number and identity of the secondary schools that are eligible for, but do not receive, Title I funds, that are identified as persistently lowest-achieving schools.	4,729	2	9,458	236,450
Indicator (d)(6)	Provide, for the State, of the persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds, the number and identity of schools that have been turned around, restarted, closed, or transformed in the last year.	4,729	2	9,458	236,450

*Figures in this column may reflect rounding.

III. ASSURANCE INDICATORS AND DESCRIPTORS BURDEN HOURS/COST FOR IHES

Citation	Description	Number of respondents	Average hours per response*	Total hours	Total cost (total hours × $25.00)
Indicator (c)(11)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i), the number and percentage (including numerator and denominator) who enroll in an IHE (as defined in section 101(a) of the HEA) within 16 months of receiving a regular high school diploma.	4,409	31.98	141,000	$3,525,000

III. ASSURANCE INDICATORS AND DESCRIPTORS BURDEN HOURS/COST FOR IHES—Continued

Citation	Description	Number of respondents	Average hours per response*	Total hours	Total cost (total hours × $25.00)
Indicator (c)(12)	Provide, for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the HEA) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.	1,676	50.47	84,584	2,114,600

* Figures in this column may reflect rounding.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared an Information Collection Request (ICR) for this collection. In preparing your comments you may want to review the ICR, which we maintain in the Education Department Information Collection System (EDICS) at *http://edicsweb.ed.gov.* Click on Browse Pending Collections. This proposed collection is identified as proposed collection 1810–0695.

We consider your comments on this collection of information in—

- Deciding whether the collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in this interim final requirement between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on the proposed collection within 30 days after publication. This does not affect the deadline for your comments to us on the interim final requirement.

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this regulatory action will affect are small LEAs receiving funds under this program and small IHEs.

This regulatory action will not have a significant economic impact on small LEAs because they will be able to meet the costs of compliance with this regulatory action using the funds provided under this program.

With respect to small IHEs, the U.S. Small Business Administration Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Based on data from the Department's Integrated Postsecondary Education Data System (IPEDS), up to 427 small IHEs with revenues of less than $5 million may be affected by these requirements; only 33 of these IHEs are public. These small IHEs represent only 13 percent of degree-granting IHEs. In addition, only 98,032 students (0.5 percent) enrolled in degree-granting IHEs in fall 2007 attended these small institutions; just 11,830 of these students are enrolled in small, degree-granting public IHEs. As the burden for indicators (c)(11) and (c)(12) is driven by the number of students for whom IHEs would be required to submit data, small IHEs will require significantly less effort to adhere to these requirements than will be the case for larger IHEs. Based on IPEDS data, the Department estimates that 1,873 of these students are first-time freshmen. As stated earlier in the *Summary of Costs and Benefits* section of this notice, the Department estimates that, as required by indicator (c)(11), IHEs will be able to confirm the enrollment of 20 first-time freshmen per hour. Applying this estimate to the estimated number of first-time freshmen at small IHEs, the Department estimates that these IHEs will need to spend 94 hours to respond to this requirement at a total cost of $2,350 (assuming a cost of $25 per hour).

The effort involved in reporting the number of students enrolling in a public IHE in their home State who complete at least one year's worth of college credit applicable toward a degree within two years as required by indicator (c)(12) will also apply to small IHEs, but will be limited to students who enroll in public IHEs in their home State. As discussed earlier in the *Summary of Costs and Benefits* section of this notice, the Department estimates that 81 percent of first-time freshmen who graduate from public high schools enroll in degree-granting IHEs in their home State. Applying this percentage to the estimated number of first-time freshmen enrolled in small public IHEs (1,873), the Department estimates that small IHEs will be required to report credit completion data for a total of 1,517 students. For this requirement, the Department also estimates that IHEs will be able to report the credit completion status of 20 first-time freshmen per hour. Again, applying this data entry rate to the estimated number of first-time freshmen at small public IHEs in their home State, the Department estimates that these IHEs will need to

spend 76 hours to respond to this requirement at a total cost of $1,900. The total cost of these requirements for small IHEs is, therefore, $4,250; $2,068 of this cost will be borne by small private IHEs, and $2,182 of the cost will be borne by small public IHEs. Based on the total number of small IHEs across the Nation, the estimated cost per small private IHE is approximately $10, and the estimated cost per small public IHE is $66. The Department has, therefore, determined that the requirements will not represent a significant burden on small not-for-profit IHEs. It is also important to note that States may use their Government Services Fund allocations to help small IHEs meet the costs of complying with the requirements that affect them, and public IHEs may use Education Stabilization Fund dollars they receive for that purpose.

In addition, the Department believes the benefits provided under this regulatory action will outweigh the burdens on these institutions of complying with the requirements. One of these benefits will be the provision of better information on student success in postsecondary education to policymakers, educators, parents, and other stakeholders. The Department believes that the information gathered and reported as a result of these requirements will improve public accountability for performance; help States, LEAs, and schools learn from one another and improve their decision-making; and inform Federal policymaking.

A second major benefit is that better public information on State and local progress in the four reform areas will likely spur more rapid progress on those reforms, because States and LEAs that appear to be lagging in one area or another may see a need to redouble their efforts. The Department believes that more rapid progress on the essential educational reforms will have major benefits nationally, and that these reforms have the potential to drive dramatic improvements in student outcomes. The requirements that apply to IHEs should, in particular, spur more rapid implementation of pre-K–16 State longitudinal data systems.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Title XIV—State Fiscal Stabilization Fund, Pub. L. 111–5; 20 U.S.C. 1221e-3 and 3474.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.394 (Education Stabilization Fund) and 84.397 (Government Services Fund).

Dated: September 19, 2011.

Arne Duncan,

Secretary of Education.

[FR Doc. 2011–24407 Filed 9–22–11; 8:45 am]

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2011–0039]

RIN 0651–AC62

Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures Under the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: On April 4, 2011, the United States Patent and Trademark Office (Office) published a final rule that revised the rules of practice in patent cases to implement a procedure under which applicants may request prioritized examination at the time of filing of an application upon payment of appropriate fees and compliance with certain requirements (Track I final rule). The prioritized examination procedure is the first track (Track I) of a 3-Track examination process designed to provide applicants with greater control over when their utility and plant applications are examined and to promote greater efficiency in the patent examination process. The Office subsequently published a final rule on April 29, 2011, indicating that the effective date of the Track I final rule was delayed until further notice due to funding limitations. The Leahy-Smith America Invents Act includes provisions for prioritized examination that emulate the requirements of the Office's Track I final rule, with revised fee amounts for prioritized examination (including a small entity discount) and a provision that addresses the funding limitations that required a delay in the implementation of the Track I final rule. This final rule implements the prioritized examination provisions of section 11(h) of the Leahy-Smith America Invents Act.

DATES: *Effective Date:* The changes in this final rule are effective on September 26, 2011. The final rule published at 76 FR 18399–18407 on April 4, 2011, is withdrawn effective September 23, 2011.

Applicability Date: A request for prioritized examination may be submitted with any original utility or plant application filed on or after September 26, 2011.

FOR FURTHER INFORMATION CONTACT: By telephone to Eugenia A. Jones, at (571) 272–7727, Kathleen Kahler Fonda, at (571) 272–7754, or Michael T. Cygan, at (571) 272–7700; or by mail addressed to: United States Patent and Trademark Office, Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones or Kathleen Kahler Fonda or Michael T. Cygan.

SUPPLEMENTARY INFORMATION: In June 2010, the Office requested comments from the public on a proposal to provide applicants with greater control over when their original utility or plant applications are examined and promote work sharing between intellectual property offices (3-Track). *See Enhanced Examination Timing Control Initiative; Notice of Public Meeting,* 75 FR 31763 (June 4, 2010). Specifically, the Office proposed to implement procedures under which an applicant would be able to: (1) Request prioritized examination of an original utility or plant nonprovisional application (Track I); (2) request a delay in docketing the application for examination, for an original utility or plant application filed under 35 U.S.C. 111(a), by filing a request for delay in payment of the search fee, the examination fee, the

claims fees, and the surcharge (if appropriate) for a maximum period not to exceed thirty months (Track III); or (3) obtain processing under the current examination procedure (Track II) by not requesting either Track I or Track III processing.

In February 2011, the Office published a notice of proposed rule making to set forth the proposed procedure for prioritized examination and to seek public comments on the proposed procedure. *See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures,* 76 FR 6369 (Feb. 4, 2011). Since the majority of the public comments supported the optional prioritized examination procedure, on April 4, 2011, the Office published a final rule that revised the rules of practice in patent cases to implement a procedure under which applicants may request prioritized examination at the time of filing of an application upon payment of appropriate fees and compliance with certain requirements (Track I final rule). *See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures,* 76 FR 18399 (Apr. 4, 2011). The Office set a goal for the prioritized examination procedure of providing a final disposition within twelve months of prioritized status being granted. *See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures,* 76 FR at 18401.

The Office, however, found it necessary to revise its patent examiner hiring plan for the remainder of fiscal year 2011 due to funding limitations. The revised hiring plan for fiscal year 2011 did not permit the Office to hire a sufficient number of new examiners for the Office to be able to meet the twelve-month pendency goal in prioritized examination applications without impacting the examination of non-prioritized applications. Therefore, the Office published a subsequent final rule delaying the effective date of the Track I final rule until further notice. *See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures,* 76 FR 23876 (Apr. 29, 2011).

After the Office published the final rule delaying the effective date of Track I, the Leahy-Smith America Invents Act was enacted into law. The Leahy-Smith America Invents Act includes provisions for prioritized examination that emulate the requirements of the Office's Track I final rule, with revised fee amounts for prioritized examination (including a small entity discount). Specifically, section 11(h) of the Leahy-Smith America Invents Act provides that a fee of $4,800 shall be established for filing a request for prioritized examination of a nonprovisional application for an original utility or plant patent; that this fee is in addition to the filing, search, examination, processing, and publication fees, as well as any applicable excess claims or application size fees; and that this $4,800 fee is reduced by fifty percent for small entities under 35 U.S.C. 41(h)(1). Section 11(h) of the Leahy-Smith America Invents Act also provides that the USPTO may by regulation prescribe conditions for acceptance of a request for prioritized examination, as well as limit the number of filings for prioritized examination that may be accepted. Section 11(h) of the Leahy-Smith America Invents Act further provides that until such regulations are prescribed, no application for which prioritized examination is requested may contain or be amended to contain more than four independent claims or more than thirty total claims, and that the Office may not accept in any fiscal year more than 10,000 requests for prioritized examination. Finally, Section 11(h) provides that the prioritized examination provisions are effective ten days after enactment of the Leahy-Smith America Invents Act (*i.e.,* on September 26, 2011). This final rule implements the prioritized examination provisions of section 11(h) of the Leahy-Smith America Invents Act.

Under prioritized examination, an application will be accorded special status and placed on the examiner's special docket throughout its entire course of prosecution before the examiner until a final disposition is reached in the application. The goal for handling applications under prioritized examination is to on average provide a final disposition within twelve months of prioritized status being granted. The final disposition for the twelve-month goal means that within twelve months from the date prioritized status has been granted that one of the following occur: (1) Mailing of a notice of allowance; (2) mailing of a final Office action; (3) filing of a notice of appeal; (4) completion of examination as defined in 37 CFR 41.102; (5) filing of a request for continued examination; or (6) abandonment of the application. An application under prioritized examination, however, would not be accorded special status throughout its entire course of appeal or interference before the BPAI, or after the filing of a request for continued examination.

The time periods set for reply in Office actions for applications in Track I will be the same as set forth in section 710.02(b) of the *Manual of Patent Examining Procedure* (MPEP) (8th ed. 2001) (Rev. 8, July 2010). This is a distinction between Track I and the Accelerated Examination program, where the time period for reply to Office actions is one month (or at least thirty days) with no extensions under 37 CFR 1.136(a) being permitted. Where, however, an applicant files a petition for an extension of time to file a reply or a request for a suspension of action, the prioritized examination of the application will be terminated. In addition, filing an amendment to the application which results in more than four independent claims, more than thirty total claims, or a multiple dependent claim will terminate the prioritized examination. Upon termination of prioritized examination, the application will be removed from the examiner's special docket and placed on the examiner's regular docket in accordance with its stage of prosecution. As the termination of prioritized examination does not cause the prioritized examination fee to have been paid by mistake or in an amount in excess of that required, the termination of prioritized examination will not entitle the applicant to a refund of the prioritized examination fee. *See* 35 U.S.C. 42(d) and § 1.26(a) (permits refunds only for fees ''paid by mistake or any amount paid in excess of that required'').

As discussed previously, the submission of an amendment resulting in more than four independent claims or more than thirty total claims is not prohibited, but simply terminates the prioritized examination. Thus, upon mailing of a final rejection (at which point prioritized examination is terminated), applicants may amend the claims to place them in independent form where dependent claims were found allowable, or add new claims, subject only to the limitations applicable to any application under final rejection. *See* § 1.116. Similarly, upon mailing of a notice of allowance, applicants may submit amendments to the claims, again subject only to the limitations applicable to any application that has been allowed. *See* § 1.312.

To maximize the benefit of prioritized examination, applicants should consider one or more of the following: (1) Acquiring a good knowledge of the state of the prior art to be able to file the application with a clear specification having a complete schedule of claims

from the broadest to which the applicant believes he is entitled in view of the prior art to the narrowest which the applicant is willing to accept; (2) submitting an application in condition for examination; (3) filing replies that are completely responsive to an Office action and within the shortened statutory period for reply set in the Office action; and (4) being prepared to conduct interviews with the examiner. The phrase ''in condition for examination'' in this context means the same as it does with respect to the current Accelerated Examination program, which is discussed at MPEP § 708.02(a) (subsection VIII.C).

The Office intends to monitor the prioritized examination program carefully. As the Office gains experience with prioritized examination as a result of the initial implementation, it may reevaluate the annual numerical cap of 10,000 prioritized examination applications. Due to the need to limit the number of applications in the prioritized examination program in its initial stages, applications entering the national stage under 35 U.S.C. 371 are not eligible. However, an applicant who has filed an international application may participate in the prioritized examination program by filing a by-pass continuation under 35 U.S.C. 111(a) rather than entering the national stage under 35 U.S.C. 371. The Office may reconsider the exclusion of applications entering the national stage under 35 U.S.C. 371 at a future date. The Office may also consider whether there is a need to limit the number of requests for prioritized examination that may be filed in each Technology Center or by any given applicant. Statistical findings about prioritized examination, including statistics concerning the Office's ability to meet its stated goals for the program, will be made available to the public on the Office's Internet Web site.

The requirements for requesting prioritized examination are summarized below. A patent application may be granted prioritized examination status under the following conditions:

(1) The application must be an original utility or plant nonprovisional application filed under 35 U.S.C. 111(a) on or after September 26, 2011, the new effective date of the Track I final rule. The procedure for prioritized examination does not apply to international applications, design applications, reissue applications, provisional applications, and reexamination proceedings. Applicants may request prioritized examination for a continuing application (*e.g.,* a continuation or divisional application). However, a continuing application will not automatically be given prioritized examination status based on the request filed in the parent application. Each application (including each continuing application) must, on its own, meet all requirements for prioritized examination under 37 CFR 1.102(e).

(2) The application must be complete under 37 CFR 1.51(b) with any excess claims fees paid on filing, and the application must be filed via the Office's electronic filing system (EFS-Web) if it is a utility application. Thus, the application must be filed with an oath or declaration under 37 CFR 1.63, the basic filing fee, the search fee, the examination fee, any excess claims fees, and any application size fee.

(3) The application must contain no more than four independent claims and no more than thirty total claims. In addition, the application must not contain any multiple dependent claims. While it is possible to file a preliminary amendment on filing of an application to reduce the number of claims to no more than four independent claims and thirty total claims, and to eliminate any multiple dependent claims, the Office strongly encourages applicants to file applications without any preliminary amendments. If an amendment is filed in an application that has been granted prioritized examination that results in more than four independent claims or thirty total claims, or a multiple dependent claim, then prioritized examination will be terminated.

(4) The request for prioritized examination must be filed with the application in compliance with 37 CFR 1.102(e), accompanied by the prioritized examination fee set forth in 37 CFR 1.17(c), the processing fee set forth in 37 CFR 1.17(i), and the publication fee set forth in 37 CFR 1.18(d). Applicants are advised to use the certification and request form PTO/SB/424 which is available on EFS-Web.

(5) The request for prioritized examination may be accepted if the requirements under 37 CFR 1.102(e) are satisfied and the limit for the number of requests for the year has not been reached. The Office is limiting requests for prioritized examination under 37 CFR 1.102(e) to a maximum of 10,000 applications during fiscal year 2011. The Office will revisit this limit at the end of fiscal year 2011 to evaluate what the appropriate maximum should be, if any.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.17: The Office is implementing a procedure for prioritized examination (Track I) under the Leahy-Smith America Invents Act upon applicant's request and payment of a fee at the time of filing of the application.

Section 1.17(c) is amended to set the fee for filing a request for prioritized examination under § 1.102(e) at $4,800.00 ($2,400.00 for small entities). *See* § 1.102(e). Thus, as of September 26, 2011, the total fee due on filing a utility application for which prioritized examination is being sought (not including any applicable excess claims and application size fees) is $6,480 ($3,360 for a small entity). The total fee due on filing for a utility application is calculated as follows: (1) The $1,250 ($530 small entity) in filing fees which includes the $380 ($95 small entity filing by EFS-Web) filing fee, the $620 ($310 small entity) search fee, and the $250 ($125 small entity) examination fee; (2) the $4,800 ($2,400 small entity) prioritized examination fee; (3) the $130 processing fee; and (4) the $300 publication fee.

Section 1.17(i) is amended to add a reference for requesting prioritized examination of an application under § 1.102(e).

Section 1.102: Section 1.102 is revised to provide for the Track I procedure in which applicant has the option to request prioritized examination on the date the application is filed. Particularly, § 1.102(a) is revised by adding a reference to paragraph (e) so that applications may be advanced out of turn for examination or for further action upon filing a request under § 1.102(e). Section 1.102(e) is added to set forth the requirements for filing a request for prioritized examination, which provides that a request for prioritized examination will not be granted unless: (1) the application is an original utility or plant nonprovisional application filed under 35 U.S.C. 111(a) that is complete as defined by § 1.51(b), with any fees due under § 1.16 (the filing fee, search fee, examination fee, any applicable excess claims fee, and any applicable application size fee) paid on filing; (2) the application is filed via the Office's electronic filing system (EFS-Web) if it is a utility application (the Office will accept a request for prioritized examination in paper when it accompanies the filing of a plant application, because plant applications may not be filed via EFS-Web); (3) the request for prioritized examination, including the prioritized examination fee set forth in § 1.17(c), the processing fee set forth in § 1.17(i), and the publication fee set forth in § 1.18(d) are

present upon filing; and (4) the application contains no more than four independent claims, no more than thirty total claims, and no multiple dependent claims. Section 1.102(e) finally provides that prioritized examination under this paragraph will not be accorded international applications, design applications, reissue applications, provisional applications, or reexamination proceedings.

The Leahy-Smith America Invents Act currently limits the number of requests for prioritized examination under § 1.102(e) that the Office may accept in each fiscal year to a maximum of 10,000. A request for prioritized examination may be accepted if the requirements under § 1.102(e) are satisfied and the limit for the number of requests has not been reached.

Rulemaking Considerations

A. *Administrative Procedure Act:* This final rule implements the prioritized examination provisions of section 11(h) of the Leahy-Smith America Invents Act. The changes in this final rule that implement the fee for prioritized examination and requirements specified in section 11(h) of the Leahy-Smith America Invents Act are merely interpretative. *See Gray Panthers Advocacy Comm.* v. *Sullivan,* 936 F.2d 1284, 1291–1292 (DC Cir. 1991) (regulation that reiterates statutory language does not require notice and comment procedures); *See Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001). The additional requirements (*e.g.,* filing via the Office's electronic filing system (EFS-Web)) merely specify the procedures that apply to applications for which an applicant has requested prioritized examination and are thus procedural and not substantive. *See JEM Broad. Co.* v. *FCC,* 22 F.3d 320, 326 (DC Cir. 1994) (''[T]he critical feature of the procedural exception [in 5 U.S.C. 553(b)(A)] is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency'') (quoting *Batterton* v. *Marshall,* 648 F.2d 694, 707 (DC Cir. 1980)).

Accordingly, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rule making for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'') (quoting 5 U.S.C. 553(b)(A)). Nevertheless, the changes being adopted in this final rule were proposed for comment in February of 2011, and those comments have been considered by the Office. *See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures,* 76 FR at 18402–06. In addition, thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) or any other law. *See* 5 U.S.C. 553(d) (requiring thirty-day advance publication for substantive rules).

B. *Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. *Executive Order 12866 (Regulatory Planning and Review):* This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. *Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563. Specifically, the Office has: (1) Used the best available techniques to quantify costs and benefits, and has considered values such as equity, fairness, and distributive impacts; (2) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rule making, and provided on-line access to the rule making docket; (3) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (4) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (5) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

E. *Executive Order 13132 (Federalism):* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. *Executive Order 13175 (Tribal Consultation):* This rule making will not: (1) Have substantial direct effects on one or more Indian Tribes; (2) impose substantial direct compliance costs on Indian Tribal governments; or (3) preempt Tribal law. Therefore, a Tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. *Executive Order 13211 (Energy Effects):* This rule making is not a significant energy action under Executive Order 13211 because this rule making is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. *Executive Order 12988 (Civil Justice Reform):* This rule making meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. *Executive Order 13045 (Protection of Children):* This rule making does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. *Executive Order 12630 (Taking of Private Property):* This rule making will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. *Unfunded Mandates Reform Act of 1995:* The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect

small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. *National Environmental Policy Act:* This rule making will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. *National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rule making does not contain provisions which involve the use of technical standards.

O. *Paperwork Reduction Act:* This rule making implements a prioritized examination process. The primary impact on the public of this change is that applicants will have the option to request prioritized examination by paying appropriate fees, filing a complete application via the Office's electronic filing system (EFS-Web) with any filing and excess claims fees due paid on filing, and limiting their applications to four independent claims and thirty total claims with no multiple dependent claims.

An applicant who wishes to participate in the program must submit a certification and request to participate in the prioritized examination program, preferably by using Form PTO/SB/424. The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Form PTO/SB/424 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995. Therefore, this rule making does not impose additional collection requirements under the Paperwork Reduction Act which are subject to further review by OMB.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, the final rule amending 37 CFR part 1 that was published at 76 FR 18399–18407 on April 4, 2011, and whose effective date was delayed until further notice at 76 FR 23876 on April 29, 2011, is withdrawn, and 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.17 is amended by adding new paragraph (c) and revising paragraph (i) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(c) For filing a request for prioritized examination under § 1.102(e):

By a small entity (§ 1.27(a))	$2,400.00
By other than a small entity	$4,800.00

* * * * *

(i) Processing fee for taking action under one of the following sections which refers to this paragraph	$130.00

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.48—for correcting inventorship, except in provisional applications.

§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(b)(3)—to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.55—for entry of late priority papers.

§ 1.71(g)(2)—for processing a belated amendment under § 1.71(g).

§ 1.99(e)—for processing a belated submission under § 1.99.

§ 1.102(e)—for requesting prioritized examination of an application.

§ 1.103(b)—for requesting limited suspension of action, continued prosecution application for a design patent (§ 1.53(d)).

§ 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d)—for requesting deferred examination of an application.

§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

§ 1.221—for requesting voluntary publication or republication of an application.

§ 1.291(c)(5)—for processing a second or subsequent protest by the same real party in interest.

§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

■ 3. Section 1.102 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 1.102 Advancement of examination.

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Director to expedite the business of the Office, or upon filing of a request under paragraph (b) or (e) of this section or upon filing a petition or request under paragraph (c) or (d) of this section with a showing which, in the opinion of the Director, will justify so advancing it.

* * * * *

(e) A request for prioritized examination under this paragraph may be filed only with an original utility or plant nonprovisional application under 35 U.S.C. 111(a) that is complete as defined by § 1.51(b), with any fees due under § 1.16 paid on filing. If the application is a utility application, it must be filed via the Office's electronic filing system (EFS-Web). A request for prioritized examination under this

paragraph must be present upon filing and must be accompanied by the prioritized examination fee set forth in § 1.17(c), the processing fee set forth in § 1.17(i), and the publication fee set forth in § 1.18(d). An application for which prioritized examination has been requested may not contain or be amended to contain more than four independent claims, more than thirty total claims, or any multiple dependent claim. Prioritized examination under this paragraph will not be accorded to international applications, design applications, reissue applications, provisional applications, or reexamination proceedings.

Dated: September 19, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–24467 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2011–0037]

RIN 0651–AC61

Revision of Standard for Granting an Inter Partes Reexamination Request

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is revising the rules of practice governing *inter partes* reexamination to implement a transition provision of the Leahy-Smith America Invents Act that changes the standard for granting a request for *inter partes* reexamination. The Office is also revising the rules governing *inter partes* reexamination to reflect the termination of *inter partes* reexamination effective September 16, 2012, which is provided for in the Act. The Leahy-Smith America Invents Act replaces *inter partes* reexamination by a new *inter partes* review process effective one year after the date of enactment of the Leahy-Smith America Invents Act (*i.e.,* September 16, 2012), and provides that any request for *inter partes* reexamination filed on or after September 16, 2011, will not be granted unless the information presented in the request establishes that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request. This replaces the prior standard for granting a request for *inter partes* reexamination that required a substantial new question of patentability (SNQ) affecting any claim of the patent raised by the request. The Leahy-Smith America Invents Act does not revise the SNQ standard for granting an *ex parte* reexamination request.

DATES: *Effective Date:* September 23, 2011. *Applicability Date:* The changes in this final rule apply to any request for *inter partes* reexamination filed on or after September 16, 2011, and before September 16, 2012.

FOR FURTHER INFORMATION CONTACT: By telephone to Kenneth M. Schor, at (571) 272–7710, or Joseph F. Weiss, Jr., at (571) 272–7759; or by mail addressed to United States Patent and Trademark Office, Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Kenneth M. Schor and Joseph F. Weiss, Jr.

SUPPLEMENTARY INFORMATION: Section 6(a) of the Leahy-Smith America Invents Act replaces the *inter partes* reexamination process that was established by the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999)) with a new *inter partes* review process. The replacement of *inter partes* reexamination with *inter partes* review is effective on September 16, 2012.

Section 6(c)(3)(A) of the Leahy-Smith America Invents Act provides a transition provision under which a request for *inter partes* reexamination will not be granted unless the information presented in the request shows that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request.

The Office is revising the rules of practice to (1) conform the standard for granting an *inter partes* reexamination to the one specified in section 6(c)(3)(A) of the Leahy-Smith America Invents Act, and (2) provide for termination of *inter partes* reexamination on September 16, 2012, as set forth in section 6(c)(3) of the Leahy-Smith America Invents Act.

The Leahy-Smith America Invents Act also creates a new *inter partes* review process to replace *inter partes* reexamination. The Office will implement the new *inter partes* review proceedings in a separate rule making.

I. Background

Prior to the enactment of the Leahy-Smith America Invents Act, 35 U.S.C. 312(a) provided, as to the standard for granting an *inter partes* reexamination request, that ''the Director shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications * * *.'' The Office has referred to this standard as ''SNQ.'' The SNQ standard for granting an *inter partes* reexamination request was enacted in the AIPA.

Section 6(c)(3)(A) of the Leahy-Smith America Invents Act amended 35 U.S.C. 312 and 313 to delete any reference to the SNQ standard, and provide, in place of each deletion, language requiring the information presented in a request for *inter partes* reexamination (filed pursuant to 35 U.S.C. 311) to show that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request.

With respect to the reasonable likelihood standard, House Rep. 112–98 (Part 1), 112th Cong., 1st Sess., provides, in connection with *inter partes* review, the following:

> ''The threshold for initiating an inter partes review is elevated from 'significant new question of patentability'—a standard that currently allows 95% of all requests to be granted—to a standard requiring petitioners to present information showing that their challenge has a reasonable likelihood of success.'' H.R. Rep. No. 112–98 (Part 1), at 47.

The Office is revising the rules of practice for *inter partes* reexamination in title 37 of the Code of Federal Regulations (CFR) by amending §§ 1.915, 1.923, 1.927, and 1.931 to delete any reference to the SNQ standard for granting reexamination, and insert in its place reference to the newly enacted ''reasonable likelihood'' standard.

The SNQ standard for granting *ex parte* reexamination has not been revised by the Leahy-Smith America Invents Act, and accordingly, the rules of practice for *ex parte* reexamination are not being revised.

When the standards for Office jurisdiction over the proceeding are effective: Section 6(c)(3)(B) of the Leahy-Smith America Invents Act provides that this transition provision applies to any request for *inter partes* reexamination filed on or after the date of enactment of the Leahy-Smith America Invents Act (*i.e.,* September 16, 2011), but before the effective date of the *inter partes* review provisions of the Leahy-Smith America Invents Act (*i.e.,* September 16, 2012). Section 6(c)(3)(C) of the Leahy-Smith America Invents Act

provides that the *inter partes* reexamination provisions of 35 U.S.C. chapter 31, as amended by section 6(c)(3) of the Leahy-Smith America Invents Act, shall apply to requests for *inter partes* reexamination filed before September 16, 2012. Accordingly, for *inter partes* reexamination, the following applies:

1. *Inter partes reexamination requests filed prior to September 16, 2011:* With respect to any *inter partes* reexamination proceeding for which a request has been filed prior to September 16, 2011, the SNQ standard is applicable in determining whether the request for *inter partes* reexamination will be granted. If reexamination is ordered based on the SNQ standard, then the SNQ standard will apply throughout the reexamination proceeding, even after September 16, 2011, or September 16, 2012.

2. *Inter partes reexamination requests filed on or after September 16, 2011, but before September 16, 2012:* With respect to any *inter partes* reexamination proceeding for which a request is filed on or after September 16, 2011, the ''reasonable likelihood'' standard is applicable in determining whether the request for *inter partes* reexamination will be granted. If reexamination is ordered based on the ''reasonable likelihood'' standard, then the ''reasonable likelihood'' standard will apply throughout the reexamination proceeding, even after September 16, 2012. In addition, the *inter partes* reexamination provisions of 35 U.S.C. chapter 31, as amended by section 6(c)(3) of the Leahy-Smith America Invents Act, and §§ 1.902–1.997 and 41.60–41.81 of title 37 CFR, effective on September 16, 2011, will apply throughout the reexamination, even after September 16, 2012.

3. *Inter partes reexamination requests filed on or after September 16, 2012:* With respect to any *inter partes* reexamination proceeding for which a request is submitted on or after September 16, 2012, the Office cannot grant, or even accord a filing date to, the request. The *inter partes* reexamination provisions of 35 U.S.C. chapter 31 are not available for any request for *inter partes* reexamination submitted on or after September 16, 2012. In other words, the Office will no longer entertain original requests for *inter partes* reexamination on or after September 16, 2012, but instead will accept petitions to conduct *inter partes* review.

II. Section-by-Section Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, Subpart H, is amended as follows:

Section 1.913: The title of § 1.913 is revised to add '', and time for filing, a'' before ''request for *inter partes* reexamination.'' The sole existing paragraph of § 1.913 is revised to add ''(a)'' before the paragraph, and to add after ''Except as provided for in § 1.907 and in paragraph (b) of this section.'' New paragraph (b) is added to explicitly provide that any request for an *inter partes* reexamination that is submitted on or after September 16, 2012, will not be accorded a filing date and that any such request will not be granted.

Section 1.915: Section 1.915 is amended by revising paragraph (b)(2) to replace the SNQ standard for granting reexamination with the ''reasonable likelihood'' standard. After ''citation of the patents and printed publications which are presented to provide,'' the language ''a showing that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request'' is added in place of ''a substantial new question of patentability.''

Section 1.915 is additionally amended by revising paragraph (b)(3) to replace the SNQ standard for granting reexamination with the ''reasonable likelihood'' standard:

> A statement pointing out, based on the cited patents and printed publications, each showing of a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested.

The amended language replaces the prior language:

> A statement pointing out each substantial new question of patentability based on the cited patents and printed publications, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested.

Section 1.923: The first sentence of § 1.923 is amended to replace the SNQ standard for granting reexamination with the ''reasonable likelihood'' standard:

> Within three months following the filing date of a request for *inter partes* reexamination under § 1.915, the examiner will consider the request and determine whether or not the request and the prior art establish a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request.

The amended language replaces the prior language:

> Within three months following the filing date of a request for *inter partes* reexamination under § 1.915, the examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art citation.

The last sentence of § 1.923 is amended to replace the SNQ standard for granting reexamination with the ''reasonable likelihood'' standard:

> If the examiner determines that the request has not established a reasonable likelihood that the requester will prevail with respect to at least one of the challenged claims, the examiner shall refuse the request and shall not order *inter partes* reexamination.

The amended language replaces the prior language:

> If the examiner determines that no substantial new question of patentability is present, the examiner shall refuse the request and shall not order *inter partes* reexamination.

Section 1.927: The last sentence of § 1.927 is amended by deleting ''no substantial new question of patentability has been raised'' after ''[i]f no petition is timely filed or if the decision on petition affirms that.'' The language ''a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request has not been established'' is added in its place.

Section 1.931: Section 1.931 is amended by revising paragraph (a) to replace the SNQ standard for granting reexamination with the ''reasonable likelihood'' standard:

> If it is found that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request, the determination will include an order for *inter partes* reexamination of the patent for resolution of the question of whether the requester will prevail.

The amended language replaces the prior language:

> If a substantial new question of patentability is found, the determination will include an order for *inter partes* reexamination of the patent for resolution of the question.

III. Rule Making Considerations

A. *Administrative Procedure Act (APA):* This final rule merely revises the rules governing *inter partes* reexamination to implement the provisions in section 6(c)(3) of the Leahy-Smith America Invents Act, which include: (1) A change to the standard for granting a request for *inter*

partes reexamination; and (2) the termination of *inter partes* reexamination on September 16, 2012. Therefore, the changes in this final rule are merely interpretative. *See Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001). Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) or any other law. See *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rule making for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'') (quoting 5 U.S.C. 553(b)(A)).

B. *Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. *Executive Order 13132 (Federalism):* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

D. *Executive Order 12866 (Regulatory Planning and Review):* This rule making has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

E. *Executive Order 13175 (Tribal Consultation):* This rule making will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal government; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

F. *Executive Order 13211 (Energy Effect):* This rule making is not a significant energy action under Executive Order 13211 because this rule making is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

G. *Executive Order 12988 (Civil Justice Reform):* This rule making meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

H. *Executive Order 13045 (Protection of Children):* This rule making is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

I. *Executive Order 12630 (Taking of Private Property):* This rule making will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

J. *Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. This final rule merely revises the rules governing *inter partes* reexamination to conform them to the change to the standard for granting a request for *inter partes* reexamination set forth in section 6(c)(3) of the Leahy-Smith America Invents Act, and the September 16, 2012 date of termination of *inter partes* reexamination provided for in section 6(c)(3) of the Leahy-Smith America Invents Act. The change in this rule making is not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rule making is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

K. *Unfunded Mandates Reform Act of 1995:* The changes in this rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of 100 million dollars or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

L. *National Environmental Policy Act:* The rule making will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1968. See 42 U.S.C. 4321 *et seq.*

M. *National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable, because this rule making does not involve the use of technical standards.

N. *Paperwork Reduction Act:* This rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this rule making has been reviewed and previously approved by OMB under OMB control number 0651–0064. This final rule merely revises the rules governing *inter partes* reexamination to conform them to the change to the standard for granting a request for *inter partes* reexamination set forth in the transition provisions of section 6(c)(3) of the Leahy-Smith America Invents Act, and the September 16, 2012 date of termination of *inter partes* reexamination provided for in section 6(c)(3) of the Leahy-Smith America Invents Act. This rule making does not impose additional collection requirements under the Paperwork Reduction Act. Therefore, the United States Patent and Trademark Office is not submitting an information collection package to OMB for its review and approval because the changes in this rule making will not affect the information collection requirements associated with the information collection under OMB control number 0651–0064.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses, and Biologics.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.913 is revised to read as follows:

§ 1.913 Persons eligible to file, and time for filing, a request for inter partes reexamination.

(a) Except as provided for in § 1.907 and in paragraph (b) of this section, any person other than the patent owner or its privies may, at any time during the period of enforceability of a patent which issued from an original application filed in the United States on or after November 29, 1999, file a request for *inter partes* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501.

(b) Any request for an *inter partes* reexamination submitted on or after September 16, 2012, will not be accorded a filing date, and any such request will not be granted.

■ 3. Section 1.915 is amended by revising paragraphs (b)(2) and (b)(3), to read as follows:

§ 1.915 Content of request for inter partes reexamination.

* * * * *

(b) * * *

(2) A citation of the patents and printed publications which are presented to provide a showing that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request.

(3) A statement pointing out, based on the cited patents and printed publications, each showing of a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested.

* * * * *

■ 4. Section 1.923 is revised to read as follows:

§ 1.923 Examiner's determination on the request for inter partes reexamination.

Within three months following the filing date of a request for *inter partes* reexamination under § 1.915, the examiner will consider the request and determine whether or not the request and the prior art establish a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request. The examiner's determination will be based on the claims in effect at the time of the determination, will become a part of the official file of the patent, and will be mailed to the patent owner at the address as provided for in § 1.33(c) and to the third party requester. If the examiner determines that the request has not established a reasonable likelihood that the requester will prevail with respect to at least one of the challenged claims, the examiner shall refuse the request and shall not order *inter partes* reexamination.

■ 5. Section 1.927 is revised to read as follows:

§ 1.927 Petition to review refusal to order inter partes reexamination.

The third party requester may seek review by a petition to the Director under § 1.181 within one month of the mailing date of the examiner's determination refusing to order *inter partes* reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request has not been established, the determination shall be final and nonappealable.

■ 6. Section 1.931 is amended by revising paragraph (a) to read as follows:

§ 1.931 Order for inter partes reexamination.

(a) If it is found that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request, the determination will include an order for *inter partes* reexamination of the patent for resolution of the question of whether the requester will prevail.

* * * * *

Dated: September 16, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–24464 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[L13100000 PP0000 LLWO310000; L1990000 PO0000 LLWO320000]

RIN 1004–AE22

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Land Management (BLM) mineral resources regulations to update some fees that cover the BLM's cost of processing certain documents relating to its minerals programs and some filing fees for mineral-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.

DATES: This final rule is effective October 1, 2011.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 2134LM, 1849 C Street, NW., Washington, DC 20240; Attention: RIN 1004–AE22.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Chief, Division of Fluid Minerals, (202) 912–7143, or Faith Bremner, Regulatory Affairs Analyst, (202) 912–7441. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and establishing the method it would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in Subchapter C according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The fee recalculations are based on a mathematical formula. The public had an opportunity to comment on this procedure during the comment period on the original cost recovery rule, and this new rule simply administers the procedure set forth in those regulations. Therefore, the BLM has changed the fees in this final rule without providing opportunity for additional notice and comment. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the rule may be

effective less than 30 days after publication.

II. Discussion of Final Rule

The BLM publishes a fee update rule each year, which becomes effective on October 1 of that year. The fee updates are based on the change in the IPD–GDP from the 4th Quarter of one calendar year to the 4th Quarter of the following calendar year. This fee update rule is based on the change in the IPD–GDP from the 4th Quarter of 2009 to the 4th Quarter of 2010, thus reflecting the rate of inflation over four calendar quarters.

The fee is calculated by applying the IPD–GDP to the base value from the previous year's rule, also known as the ''existing value''. This calculation results in an updated base value. The updated base value is then rounded to the closest multiple of $5, or to the nearest cent for fees under $1, to establish the new fee.

Under this rule, 27 fees will remain the same and 21 fees will increase. Nineteen of the fee increases will amount to $5 each. The largest increase, $35, will be applied to the fee for adjudicating a mineral patent application containing more than 10 claims, which will increase from $2,840 to $2,875. The fee for adjudicating a patent application containing 10 or fewer claims will increase by $20—from $1,420 to $1,440.

The calculations that resulted in the new fees are included in the table below:

FIXED COST RECOVERY FEES FY12

Document/action	Existing fee [1]	Existing value [2]	IPD–GDP increase [3]	New value [4]	New fee [5]
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)					
Noncompetitive lease application	$375	$377.23	$5.09	$382.32	$380
Competitive lease application	145	146.39	1.98	148.37	150
Assignment and transfer of record title or operating rights	85	84.45	1.14	85.59	85
Overriding royalty transfer, payment out of production	10	11.26	0.15	11.41	10
Name change, corporate merger or transfer to heir/devisee	195	197.05	2.66	199.71	200
Lease consolidation	415	416.63	5.62	422.25	420
Lease renewal or exchange	375	377.23	5.09	382.32	380
Lease reinstatement, Class I	75	73.18	0.99	74.17	75
Leasing under right-of-way	375	377.23	5.09	382.32	380
Geophysical exploration permit application—Alaska	25				[5] 25
Renewal of exploration permit—Alaska	25				[6] 25
Geothermal (part 3200)					
Noncompetitive lease application	375	377.23	5.09	382.32	380
Competitive lease application	145	146.39	1.98	148.37	150
Assignment and transfer of record title or operating rights	85	84.45	1.14	85.59	85
Name change, corporate merger or transfer to heir/devisee	195	197.05	2.66	199.71	200
Lease consolidation	415	416.63	5.62	422.25	420
Lease reinstatement	75	73.18	0.99	74.17	75
Nomination of lands	105	105.40	1.42	106.82	105
plus per acre nomination fee	0.11	0.10540	0.00142	0.10682	0.11
Site license application	55	56.30	0.76	57.06	55
Assignment or transfer of site license	55	56.30	0.76	57.06	55
Coal (parts 3400, 3470)					
License to mine application	10	11.26	0.15	11.41	10
Exploration license application	310	309.66	4.18	313.84	315
Lease or lease interest transfer	60	61.94	0.84	62.78	65
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)					
Applications other than those listed below	35	33.78	0.46	34.24	35
Prospecting permit application amendment	60	61.94	0.84	62.78	65
Extension of prospecting permit	100	101.34	1.37	102.71	105
Lease modification or fringe acreage lease	30	28.16	0.38	28.54	30
Lease renewal	485	484.20	6.54	490.74	490
Assignment, sublease, or transfer of operating rights	30	28.16	0.38	28.54	30
Transfer of overriding royalty	30	28.16	0.38	28.54	30
Use permit	30	28.16	0.38	28.54	30
Shasta and Trinity hardrock mineral lease	30	28.16	0.38	28.54	30
Renewal of existing sand and gravel lease in Nevada	30	28.16	0.38	28.54	30
Multiple Use; Mining (part 3700)					
Notice of protest of placer mining operations	10	11.26	0.15	11.41	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)					
Application to open lands to location	10	11.26	0.15	11.41	10
Notice of location	15	16.88	0.23	17.11	15
Amendment of location	10	11.26	0.15	11.41	10
Transfer of mining claim/site	10	11.26	0.15	11.41	10
Recording an annual FLPMA filing	10	11.26	0.15	11.41	10

FIXED COST RECOVERY FEES FY12—Continued

Document/action	Existing fee [1]	Existing value [2]	IPD–GDP increase [3]	New value [4]	New fee [5]
Deferment of assessment work	100	101.34	1.37	102.71	105
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30	28.16	0.38	28.54	30
Mineral patent adjudication.					
(more than 10 claims)	2,840	2,837.64	38.31	2,875.95	2,875
(10 or fewer claims)	1,420	1,418.81	19.15	1,437.96	1,440
Adverse claim	100	101.34	1.37	102.71	105
Protest	60	61.94	0.84	62.78	65
Oil Shale Management (parts 3900, 3910, 3930)					
Exploration license application	295	297.01	4.01	301.02	300
Application for assignment or sublease of record title or overriding royalty	60	60.41	0.82	61.23	60

[1] The Existing Fee was established by the 2010 (Fiscal Year 2011) cost recovery fee update rule published September 14, 2010 (75 FR 55678), effective October 1, 2010.
[2] The Existing Value is the figure from the New Value column in the previous year's rule.
[3] From 4th Quarter 2009 to 4th Quarter 2010, the IPD–GDP increased by 1.35 percent. The value in the IPD–GDP Increase column is 1.35 percent of the Existing Value.
[4] The sum of the Existing Value and the IPD–GDP Increase is the New Value.
[5] The New Fee for Fiscal Year 2012 is the New Value rounded to the nearest $5 for values equal to or greater than $1, or to the nearest penny for values under $1.
[5] Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) directed in subsection (i) that "the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations." In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854–58855. While the $25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, the BLM interprets the Energy Policy Act provision as prohibiting it from increasing this $25 fee.
[6] The BLM interprets the Energy Policy Act prohibition discussed in footnote 6, above, as prohibiting it from increasing this $25 fee, as well.

III. How Fees Are Adjusted

Each year, the figures in the Existing Value column in the table above (not those in the Existing Fee column) are used as the basis for calculating the adjustment to these fees. The Existing Value is the figure from the New Value column in the previous year's rule. In the case of fees that were not in the table the previous year, or that had no figure in the New Value column the previous year, the Existing Value is the same as the Existing Fee. Because the new fees are derived from the new values—rounded to the nearest $5 or the nearest penny for fees under $1—adjustments based on the figures in the Existing Fee column would lead to significantly over-or-under-valued fees over time. Accordingly, fee adjustments are made by multiplying the annual change in the IPD–GDP by the figure in the Existing Value column. This calculation defines the New Value for this year, which is then rounded to the nearest $5 or the nearest penny for fees under $1, to establish the New Fee.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The BLM has determined that the rule will not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities. The changes in today's rule are much smaller than those in the 2005 final rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule does apply an inflation factor that increases some existing user fees for processing documents associated with the onshore minerals programs. However, most of these fee increases are less than 3 percent and none of the increases materially affect the budgetary impact of user fees.

Finally, this rule will not raise novel legal issues. As explained above, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 cost recovery rule.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining. A coal lessee is a small entity if it employs not more than 250 people, including people working for its affiliates.

The SBA would consider many, if not most, of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of ''small entity.''

The final rule may affect a large number of small entities since 21 fees for activities on public lands will be increased. However, the BLM has concluded that the effects will not be significant. Most of the fixed fee increases will be less than 3 percent as a result of this final rule. The adjustments result in no increase in the fee for the processing of 27 documents relating to the BLM's minerals programs. The highest adjustment, in dollar terms, is for adjudications of mineral patent applications involving more than 10 mining claims, which will be increased by $35. For the 2005 final rule, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. For the 2005 final rule, which established the fee adjustment procedure that this rule implements, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

Executive Order 13132, Federalism

This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, therefore, we find that the final rule does not have significant federalism effects. A federalism assessment is not required.

The Paperwork Reduction Act of 1995

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the BLM submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. The OMB approved the information collection requirements under the following Control Numbers:

Oil and Gas

(1) 1004–0034 which expires July 31, 2012;

(2) 1004–0137 which expires September 30, 2011, renewal pending;

(3) 1004–0162 which expires May 31, 2012;

(4) 1004–0185 which expires November 30, 2012;

Geothermal

(5) 1004–0132 which expires December 31, 2013;

Coal

(6) 1004–0073 which expires June 30, 2013;

Mining Claims

(7) 1004–0025 which expires March 31, 2013;

(8) 1004–0114 which expires August 31, 2013; and

Leasing of Solid Minerals Other Than Oil Shale

(9) 1004–0121 which expires February 28, 2013.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule is administrative and involves only procedural changes addressing fee requirements. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215.

Pursuant to Council on Environmental Quality (CEQ) regulation and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means categories of actions ''which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of [CEQ] regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.'' 40 CFR 1508.4; *see also* BLM National Environmental Policy Act Handbook H–1790–1, Ch. 4, at 17 (Jan. 2008).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* because it will not result in state, local, private sector, or Tribal government expenditures of $100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have Tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian Tribes. The BLM has not found any substantial direct effects. Consequently, the BLM did not utilize the consultation process set forth in Section 5 of the Executive Order.

Information Quality Act

In developing this rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this final rule. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Faith Bremner of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

Marcilynn A. Burke,

Acting Assistant Secretary, Land and Minerals Management.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR chapter II as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to the BLM for the services listed for Fiscal Year 2012. These fees are nonrefundable and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM Web site (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

FY 2012 PROCESSING AND FILING FEE TABLE

Document/action	FY 2012 Fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)	
Noncompetitive lease application	$380
Competitive lease application	150
Assignment and transfer of record title or operating rights	85
Overriding royalty transfer, payment out of production	10
Name change, corporate merger or transfer to heir/devisee	200
Lease consolidation	420
Lease renewal or exchange	380
Lease reinstatement, Class I	75
Leasing under right-of-way	380
Geophysical exploration permit application—Alaska	25
Renewal of exploration permit—Alaska	25
Geothermal (part 3200)	
Noncompetitive lease application	380
Competitive lease application	150
Assignment and transfer of record title or operating rights	85
Name change, corporate merger or transfer to heir/devisee	200
Lease consolidation	420
Lease reinstatement	75
Nomination of lands	105
plus per acre nomination fee	0.11
Site license application	55
Assignment or transfer of site license	55
Coal (parts 3400, 3470)	
License to mine application	10
Exploration license application	315
Lease or lease interest transfer	65
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)	
Applications other than those listed below	35
Prospecting permit application amendment	65
Extension of prospecting permit	105
Lease modification or fringe acreage lease	30
Lease renewal	490
Assignment, sublease, or transfer of operating rights	30
Transfer of overriding royalty	30
Use permit	30
Shasta and Trinity hardrock mineral lease	30

FY 2012 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2012 Fee
Renewal of existing sand and gravel lease in Nevada	30
Multiple Use; Mining (part 3730)	
Notice of protest of placer mining operations	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)	
Application to open lands to location	10
Notice of location*	15
Amendment of location	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing	10
Deferment of assessment work	105
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30
Mineral patent adjudication	2,875 (more than 10 claims) 1,440 (10 or fewer claims)
Adverse claim	105
Protest	65
Oil Shale Management (parts 3900, 3910, 3930)	
Exploration license application	300
Application for assignment or sublease of record title or overriding royalty	60

*To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833.

* * * * *

[FR Doc. 2011–24494 Filed 9–22–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XA677

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the vermilion snapper resource.

DATES: This rule is effective 12:01 a.m., local time, September 30, 2011, until 12:01 a.m., local time, January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial quota for vermilion snapper in the South Atlantic is 302,523 lb (137,222 kg) for the current fishing period, July 1 through December 31, 2011, as specified in 50 CFR 622.42(e)(4)(ii). On June 15, 2011, NMFS published a final rule implementing a commercial trip limit for vermilion snapper of 1,500 lb (680 kg) per day, which was effective on July 15, 2011 (76 FR 34892). This trip limit, specified in 50 CFR 622.44(c)(6), remains in effect until the commercial quota for vermillion snapper is reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial sector for vermilion snapper when its quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for South Atlantic vermilion snapper will have been reached by September 30, 2011. Accordingly, the commercial sector for South Atlantic vermilion snapper is closed effective 12:01 a.m., local time, September 30, 2011, until 12:01 a.m., local time, January 1, 2012.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, September 30, 2011. During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(v) and (d)(2), respectively, apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ, and the sale or purchase of vermilion snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, September 30, 2011, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately

implement this action to close the commercial sector for vermilion snapper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2011.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–24502 Filed 9–20–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 110707375–1578–02]

RIN 0648–BB07

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Stone Crab Fishery of the Gulf of Mexico; Removal of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to repeal the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) and remove its implementing regulations, as requested by the Gulf of Mexico Fishery Management Council (Council). The stone crab fishery takes place primarily in state waters off the coast of Florida, and the Florida Fish and Wildlife Conservation Commission (FWC) is extending its management of the fishery into Federal waters. Repealing the Federal regulations will eliminate duplication of management efforts, reduce costs for the Federal government, and align with the President's Executive Order 13563, ''Improving Regulation and Regulatory Review,'' to ensure Federal regulations are more effective and less burdensome in achieving regulatory objectives. The intended effect of this action is to enhance the effectiveness and efficiency of managing the stone crab fishery in the Gulf of Mexico (Gulf).

DATES: This rule is effective October 24, 2011.

ADDRESSES: Electronic copies of documents supporting this final rule, which include an environmental assessment, may be obtained from Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/StoneCrab.htm.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305 or e-mail: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The stone crab fishery of the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 654 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On July 20, 2011, NMFS published a proposed rule to repeal the Federal stone crab FMP and requested public comment (76 FR 43250). The proposed rule and the environmental assessment outline the rationale for the measures contained in this final rule. This final rule will repeal the Federal stone crab FMP and its implementing regulations. The FWC has already voted to extend its authority to regulate stone crab in Federal waters. The intended effect of this rule is to eliminate duplication of management efforts, reduce costs, and enhance regulatory efficiency of the stone crab resource.

Comments and Responses

NMFS received two comments on the proposed rule, one from a Federal agency that was non-substantive and one from an individual that expressed general support for the rule. Neither submission expressed substantive comments on the proposed rule and, therefore, are not repeated here.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary to more efficiently manage the stone crab resource, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing, Incorporation by reference.

Dated: September 15, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.,* part 654 is removed.

PART 654—[REMOVED]

■ 1. Remove part 654.

[FR Doc. 2011–24274 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA722

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for shallow-water species by

vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to fully use the fourth seasonal apportionment of the 2011 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 20, 2011. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 11, 2011.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XA722, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* Submit written comments to P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for shallow-water species by vessels using trawl gear in the GOA under § 679.21(d)(7)(i) on September 3, 2011 (76 FR 55726, September 7, 2011) and subsequent reopener from September 14, 2011 to September 16, 2011 (76 FR 57679, September 16, 2011).

As of September 19, 2011, NMFS has determined that approximately 481 metric tons remain in the fourth seasonal apportionment of the 2011 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the fourth seasonal apportionment of the 2011 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA, NMFS is terminating the previous closure and is opening directed fishing for shallow-water species by vessels using trawl gear in the GOA. This will enhance the socioeconomic well-being of harvesters dependent upon shallow-water species in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of halibut by trawl vessels participating in the shallow-water species fisheries and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, sharks, sculpins, and octopus.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for shallow-water species by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent and relevant data only became available as of September 19, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for shallow-water species by vessels using trawl gear in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 5, 2011.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2011.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–24499 Filed 9–20–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 76, No. 185

Friday, September 23, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Chapter XII

[No. 2011–N–10]

Notice of Regulatory Review Plan

AGENCY: Federal Housing Finance Agency.

ACTION: Notice and request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a notice of and requesting comments on the FHFA interim regulatory review plan for review of existing regulations under Executive Order 13579, ''Regulation and Independent Regulatory Agencies,'' (July 11, 2011).

DATES: Written comments on this Notice must be received no later than November 22, 2011. For additional information, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit comments *only once,* identified by ''2011–N–10,'' using one of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.* Please include ''2011–N–10,'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: ''2011–N–10.''
- *U.S. Mail Service or United Parcel Service, Federal Express, or other commercial delivery service to:* Alfred M. Pollard, General Counsel, Attention: Comments/2011–N–10, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Please note that all mail sent to FHFA via the U.S. Mail service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.
- *Hand Delivery/Courier to:* Alfred M. Pollard, General Counsel, Attention: Comments/2011–N–10, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package must be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, *alfred.pollard@fhfa.gov*, telephone (202) 414–3788 (not a toll-free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the interim regulatory review plan, including legal and policy considerations, and will take all comments into consideration before publishing a notice of the final regulatory review plan.

Copies of all comments received during the public comment period will be posted without change on the FHFA Internet Web site, *http://www.fhfa.gov,* and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

II. Background

Executive Order 13579

Executive Order 13579, ''Regulation and Independent Regulatory Agencies,'' (July 11, 2011), requests that each independent regulatory agency, such as FHFA, analyze its existing regulations and modify, streamline, expand, or repeal them in accordance with the findings of the analysis. Executive Order 13579 also requests each independent regulatory agency to make public a plan under which the agency will periodically review its existing significant regulations to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.

Establishment of FHFA; Transfer and Review of Regulations

The Housing and Economic Recovery Act of 2008 (HERA) established FHFA on July 30, 2008, as an independent regulatory agency to supervise and regulate the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (collectively, regulated entities), and the Office of Finance of the Federal Home Loan Bank System. HERA transferred to the new agency the employees, functions, and regulations of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), and the Government-Sponsored Enterprise mission team within the U.S. Department of Housing and Urban Development (HUD).

HERA and, most recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) mandate that FHFA issue new regulations on specific matters in connection with FHFA's supervision and regulation of the regulated entities and the Office of Finance. Currently, in determining whether to revise, adopt without change, or repeal transferred OFHEO, FHFB, and certain HUD regulations, FHFA reviews such regulations to determine the appropriate action and publishes the regulations for comment. Public comments provide additional information to FHFA on how to make the regulations more effective and less burdensome.

Regulatory Review Plan Under Executive Order 13579

FHFA's current review of OFHEO, FHFB, and certain HUD regulations is similar to the review it will conduct of existing regulations under Executive Order 13579. The regulatory review plan is set forth below. FHFA will conduct the review of its existing regulations under Executive Order 13579 at least every five years. In light of the recent establishment of FHFA and ongoing regulatory activities mandated by HERA and the Dodd-Frank Act, the first review will begin no later than August 2013, five years after the establishment of FHFA. FHFA regulations published in Chapter XII of Title 12 of the *Code of Federal Regulations* and are also posted on the FHFA Internet Web site at *http://www.fhfa.gov.*

After considering all comments received, FHFA will publish a notice of the final regulatory review plan in the **Federal Register** and post it on the FHFA Web site, *http://www.fhfa.gov.*

The interim regulatory review plan follows.

Plan for Review of Existing Regulations Under Executive Order 13579

a. *Scope and timing of regulatory reviews.* At least every five years, FHFA will conduct a review of the regulations it has issued and that are in effect. The first regulatory review will begin no later than August 2013.

b. *Factors considered in the regulatory reviews.* The regulatory reviews will take into consideration the following factors, as applicable:

(1) Legal or regulatory developments, including new laws, executive orders or judicial decisions that have been adopted since the promulgation of a regulation that make such regulation inefficient, obsolete, contrary to controlling legal precedent, or unduly burdensome;

(2) Application by Fannie Mae, Freddie Mac, or a Federal Home Loan Bank (regulated entity) or the Office of Finance of the Federal Home Loan Bank System for revision of a regulation because of reasonably discernible regulatory burden or inefficiency;

(3) Marketplace developments, technological evolution and related changes that may have rendered an existing regulation, in whole or in part, inefficient, outmoded, or outdated;

(4) Such other occurrences or developments as determined by FHFA to be relevant to a review for inefficiency or unwarranted regulatory burden;

(5) Whether the provisions of the regulation are written in plain language or otherwise need clarification;

(6) Compelling evidence that a consolidation of two or more regulations, elimination of a duplicative regulation, or other revision to regulatory requirements would facilitate compliance by or supervision of a regulated entity or the Office of Finance;

(7) A demonstration of a better alternative method to effect a regulatory purpose or requirement supported by compelling evidence of significantly less intrusive means or of a substantially more efficient method of accomplishing the same supervisory purpose; and

(8) Such other factors as determined by FHFA to be relevant to determining and evaluating the need for and effectiveness of a particular regulation.

c. *Regulatory review process.*—(1) The regulatory reviews will be conducted by the FHFA Office of General Counsel, under the direction of the General Counsel, and will include internal consultation with other FHFA offices and staff, guidance provided by the FHFA Director, as well as consideration of public comments.

(2) A review and report of findings and recommendations will be provided to the FHFA Director on a timely basis. The report of findings and recommendations will be privileged and confidential.

(3) After receiving the report of findings and recommendations, the FHFA Director will determine what steps may be necessary to relieve any unnecessary burden, including amendment to or repeal of existing regulations or issuance of less formal guidance.

d. *No right of action.* The regulatory reviews are not formal or informal rulemaking proceedings under the Administrative Procedure Act and create no right of action against FHFA. Moreover, the determination of FHFA to conduct or not to conduct a review of a regulation and any determination, finding, or recommendation resulting from any review are not final agency actions and, as such, are not subject to judicial review.

Dated: September 16, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–24405 Filed 9–22–11; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0992; Directorate Identifier 2011–NM–126–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Three (3) events have occurred where the Air-Driven Generator (ADG) failed to provide power on CL–600–2B19 (CRJ) aeroplanes during their regularly scheduled operational/functional checks. An investigation revealed that in all cases, the silver-plated copper wires within the ADG power feeder cables were damaged due to galvanic corrosion. It was subsequently determined that the silver-plating is inadequate for this application.

In the event of damage to the power feeder cable wires, the ADG may not be able to provide emergency electrical power to the aeroplane.

Although there have been no reported failures to date on any CL–600–2B16 (604 Variant) aeroplanes, a sampling program carried out on these aeroplanes showed signs of microscopic galvanic corrosion on the ADG power feeder cable wires.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 7, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor,

Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0992; Directorate Identifier 2011–NM–126–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–08, dated April 28, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Three (3) events have occurred where the Air-Driven Generator (ADG) failed to provide power on CL–600–2B19 (CRJ) aeroplanes during their regularly scheduled operational/functional checks. An investigation revealed that in all cases, the silver-plated copper wires within the ADG power feeder cables were damaged due to galvanic corrosion. It was subsequently determined that the silver-plating is inadequate for this application.
>
> In the event of damage to the power feeder cable wires, the ADG may not be able to provide emergency electrical power to the aeroplane.
>
> Although there have been no reported failures to date on any CL–600–2B16 (604 Variant) aeroplanes, a sampling program carried out on these aeroplanes showed signs of microscopic galvanic corrosion on the ADG power feeder cable wires.
>
> This directive is issued to correct this potentially unsafe condition by mandating the replacement of all ADG power feeder cables * * * with an ADG power feeder cable that contains tin-plated copper wires.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 604–24–024, dated January 31, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 72 products of U.S. registry. We also estimate that it would take about 24 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,897 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $283,464, or $3,937 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2011–0992; Directorate Identifier 2011–NM–126–AD.

Comments Due Date

(a) We must receive comments by November 7, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, & CL–604 Variants) airplanes, certificated in any category, serial numbers 5301, 5302, 5305 through 5318 inclusive, 5320 through 5328 inclusive, 5331 through 5349 inclusive, 5351 through 5367 inclusive, 5369 through 5408 inclusive, 5410, 5412 through 5426 inclusive, 5428 through 5438 inclusive, 5440 through 5489 inclusive, 5491 through 5498 inclusive, 5500 through 5517 inclusive, 5519 through 5522 inclusive, and 5524 through 5665 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Three (3) events have occurred where the Air-Driven Generator (ADG) failed to provide power on CL–600–2B19 (CRJ) aeroplanes during their regularly scheduled operational/functional checks. An investigation revealed that in all cases, the silver-plated copper wires within the ADG power feeder cables were damaged due to galvanic corrosion. It was subsequently determined that the silver-plating is inadequate for this application.

In the event of damage to the power feeder cable wires, the ADG may not be able to provide emergency electrical power to the aeroplane.

Although there have been no reported failures to date on any CL–600–2B16 (604 Variant) aeroplanes, a sampling program carried out on these aeroplanes showed signs of microscopic galvanic corrosion on the ADG power feeder cable wires.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 72 months after the effective date of this AD, replace the ADG power feeder cable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–24–024, dated January 31, 2011.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(i) Refer to MCAI Transport Canada Civil Aviation (TCCA) Airworthiness Directive CF–2011–08, dated April 28, 2011; and Bombardier Service Bulletin 604–24–024, dated January 31, 2011; for related information.

Issued in Renton, Washington on September 16, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–24432 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 985

[Docket No. FR–5532–P–01]

RIN 2577–AC76

Revision to the Section 8 Management Assessment Program Lease-Up Indicator

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations for the Section 8 Management Assessment program (SEMAP) to revise the process by which HUD measures and verifies performance under the SEMAP lease-up indicator. Specifically, HUD proposes to amend the existing regulation to reflect that assessment of a public housing agency's (PHA) leasing indicator will be based on a calendar year cycle, rather than a fiscal year cycle, which would increase administrative efficiencies for PHAs. This proposed rule would also clarify that units assisted under the voucher homeownership option or occupied under a project-based housing assistance (HAP) contract are included in the assessment of PHA units leased.

DATES: *Comment Due Date:* October 24, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to

the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4216, Washington, DC 20410, telephone number 202–402–2425.

SUPPLEMENTARY INFORMATION:

I. Background

In 2005, the Office of Public and Indian Housing (PIH) issued PIH Notice 2005–1, which implemented a policy for voucher renewal funding based on a calendar year system as provided by the Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, approved December 8, 2004). The 2005 Consolidated Appropriations Act provides, in relevant part, that ''the Secretary for the calendar year 2005 funding cycle shall renew such contracts for each public housing agency based on verified Voucher Management System leasing and cost data.'' (See 118 Stat. 3295.) The 2005 PIH notice provides that ''PHAs will receive monthly disbursements from HUD on the basis of the PHA's calculated calendar year budget.'' Since the issuance of this notice and consistent with the 2005 appropriations act, HUD has provided PHAs with renewal funding for their Housing Choice Voucher (HCV) program on a calendar year basis. At the beginning of each calendar year, PHAs are notified of their funding amounts for the calendar year and they plan their voucher issuance and leasing according to that funding cycle.

In contrast to the process for measuring voucher management system leasing and cost data, the SEMAP lease-up indicator continues to measure a PHA's lease-up rate on a fiscal year basis. The use of a calendar year for renewal funding, while using a fiscal year system for SEMAP measurements, has resulted in increased complexity for PHAs administering the voucher program and programmatic inefficiency. To eliminate such complexity, and reduce inefficiency in the voucher program resulting from two processes based on different periods of measurement, through this rule HUD would amend the SEMAP regulations to provide for the SEMAP lease-up indicator to be measured based on a calendar year funding cycle, rather than the existing fiscal year cycle.

This proposed rule would also clarify that units assisted under the voucher homeownership option or occupied under a project-based housing assistance (HAP) contract are included in the assessment of PHA units leased. These homeownership units and project-based voucher units have always been included in the assessment, but this is not explicit in current regulations.

II. Findings and Certifications

Justification for 30-Day Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, the Department is shortening its usual 60-day public comment period to 30 days for this proposed rule. This rule, which promotes consistency within HUD regulations, alleviates unnecessary administrative burdens for PHAs, and provides a more accurate reflection of PHA lease-up rates. Therefore, a 60-day public comment period prior to implementation is unnecessary, and to further delay implementation of this policy would be contrary to the public interest.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendments will not impose any economic costs on nonprofit organizations. Rather, the sole purpose of the proposed rule is to bring HUD regulations in line with current PHA practice. This rule would also provide clarification for PHAs regarding units included in this measure.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise, or provide for standards for construction or

construction materials, manufactured housing, or occupancy. This rule is limited to the means by which PHAs lease-up rates are measured. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

List of Subjects in 24 CFR Part 985

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 985 as follows:

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

1. The authority citation for part 985 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

2. Revise § 985.3(n) to read as follows:

§ 985.3 Indicators, HUD verification methods and ratings.

* * * * *

(n) *Lease-up.* (1) This indicator shows whether the PHA enters into HAP contracts for the number of the PHA's baseline voucher units (units that are contracted under an ACC) for the calendar year that ends on or before the PHA's fiscal year or whether the PHA has expended its allocated budget authority for the same calendar year. Units assisted under the voucher homeownership option and units occupied under a project-based HAP contract are included in the measurement of this indicator. Units and funding contracted under an ACC during the assessed calendar year and units and funding that are obligated for litigation are not included in the baseline number of voucher units.

(2) HUD verification method: Percent of units leased under a tenant-based or project-based HAP contract or occupied by homeowners under the voucher homeownership option during the calendar year that ends on or before the assessed PHA's fiscal year, or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA's fiscal year. The percent of units leased is determined by taking unit months leased under a HAP contract and unit months occupied by homeowners under the voucher homeownership option as shown in HUD systems for the calendar year that ends on or before the assessed PHA fiscal year and dividing that number by the number of unit months available for leasing based on the number of baseline units available at the beginning of the calendar year.

(3) *Rating:* (i) The percent of units leased or occupied by homeowners under the voucher homeownership option or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA fiscal year was 98 percent or more. 20 points.

(ii) The percent of units leased or occupied by homeowners under the voucher homeownership option or the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA fiscal year was 95 to 97 percent. 15 points.

(iii) The percent of units leased or occupied by homeowners under the voucher homeownership option and the percent of allocated budget authority expended during the calendar year that ends on or before the assessed PHA fiscal year was less than 95 percent. 0 points.

* * * * *

Dated: August 19, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing—HUD.

[FR Doc. 2011–24514 Filed 9–22–11; 8:45 am]

BILLING CODE 4210–67–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Freedom of Information Act Regulations

AGENCY: Central Intelligence Agency.

ACTION: Proposed rule.

SUMMARY: Consistent with the Freedom of Information Act (FOIA), as amended by the ''Openness Promotes Effectiveness in our National Government Act of 2007,'' and Executive Orders 13526 and 13392, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public FOIA regulations that govern certain aspects of its processing of FOIA requests. As a result of this review, the Agency proposes to revise its FOIA regulations to more clearly reflect the current CIA organizational structure, record system configuration, and FOIA policies and practices and to eliminate ambiguous, redundant and obsolete regulatory provisions. As required by the FOIA, the Agency is providing an opportunity for interested persons to submit comments on these proposed regulations.

DATES: Submit comments on or before November 22, 2011.

ADDRESSES: Submit comments to the Director, Information Management Services, Central Intelligence Agency, Washington, DC 20505 or fax to (703) 613–3020.

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, (703) 613–1379.

SUPPLEMENTARY INFORMATION: Consistent with the Freedom of Information Act (FOIA), as amended by the ''Openness Promotes Effectiveness in our National Government Act of 2007,'' and Executive Order 13392, the CIA has undertaken and completed a review of its public FOIA regulations that govern certain aspects of its processing of FOIA requests. As a result of this review, the Agency proposes to revise its FOIA regulations to more clearly reflect the current CIA organizational structure, record system configuration, and FOIA policies and practices and to eliminate ambiguous, redundant and obsolete regulatory provisions. These proposed regulatory changes are intended to enhance the administration and operations of the Agency's FOIA program by increasing the transparency and clarity of the regulations governing the Agency's FOIA program.

The proposed regulations would establish the positions and responsibilities of the Agency's Chief FOIA Officer, the FOIA Public Liaison

and the FOIA Requester Service Center in the Agency's public FOIA regulations. Following the promulgation of Executive Order 13392, the Director, Central Intelligence Agency (D/CIA) designated a senior official to serve as the CIA's Chief FOIA Officer with Agency-wide responsibility for efficient and appropriate compliance with the FOIA. In addition, the Agency created a FOIA Requester Service Center and designated FOIA Public Liaisons to enhance the operation of the Agency's FOIA program and the Agency's responsiveness to FOIA requesters and the public. Consistent with both Executive Order 13392 and the ''Openness Promotes Effectiveness in our National Government Act of 2007,'' the proposed regulations incorporate into the CIA's public FOIA regulations the important functions the Agency's Chief FOIA Officer, the FOIA Public Liaison and the FOIA Requester Service Center have been performing for the past several years. By formally recognizing the key roles these entities play in the Agency's FOIA processes, the proposed regulations promote the administration of a citizen-centered FOIA program and provide the public with important information about the assistance these entities can offer to FOIA requesters and the public.

The proposed regulations would eliminate current regulatory provisions that have had the potential to cause confusion and ambiguity and would more clearly reflect the Agency's current FOIA policies and practices.

The proposed regulations would clarify and confirm the Agency's current FOIA practices of processing FOIA requests and appeals on a ''first in, first out'' basis using two or more processing queues based on the amount of work or time or both involved and of moving a FOIA request to the front of the processing queue when the Agency has granted that requester's request for expedited processing.

With these proposed changes the Agency's public FOIA regulations would clarify the responsibility of the Agency Release Panel to review appeals of certain Agency FOIA determinations.

The proposed regulation would increase the per page fee for copies.

List of Subjects in 32 CFR Part 1900

Classified information, Freedom of information.

As stated in the preamble, the CIA proposes to amend 32 CFR part 1900 as follows:

PART 1900—PUBLIC ACCESS TO CIA RECORDS UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 1900 is revised to read as follows:

Authority: 50 U.S.C. 401–442; 50 U.S.C. 403a–403v; 5 U.S.C. 552; Executive Order 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

2. Amend § 1900.02 by adding paragraphs (p), (q), (r), and (s) to read as follows:

§ 1900.02 Definitions.

* * * * *

(p) *Chief FOIA Officer* means the senior CIA official, at the CIA's equivalent of the Assistant Secretary level, who has been designated by the D/CIA to have Agency-wide responsibility for the CIA's efficient and appropriate compliance with the FOIA.

(q) *FOIA Requester Service Center* means the office within the CIA where a FOIA requester may direct inquiries regarding the status of a FOIA request or an expression of interest he or she filed at the CIA, requests for guidance on narrowing or further defining the nature or scope of his or her FOIA request, and requests for general information about the FOIA program at the CIA.

(r) *FOIA Public Liaison* means the CIA supervisory official(s) who shall assist in the resolution of any disputes between a FOIA requester and the Agency and to whom a FOIA requester may direct a concern regarding the service he or she has received from CIA and who shall respond on behalf of the Agency as prescribed in these regulations.

(s) *Agency Release Panel (ARP)* means the Agency's forum for reviewing information review and release policy, the adequacy of resources available to all Agency declassification and release programs, and hearing appeals in accordance with this section.

3. Revise § 1900.03 to read as follows:

§ 1900.03 Contact for general information and requests.

(a) To file a FOIA request, an expression of interest, or an administrative appeal, please direct your written communication to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, or via facsimile at (703) 613–3007 in accordance with the requirements of these regulations.

(b) To inquire about the status of a FOIA request or an expression of interest, to request guidance on narrowing or further defining the nature or scope of a FOIA request, or to obtain general information about the FOIA program at CIA, please direct your inquiry to the CIA FOIA Requester Service Center, Central Intelligence Agency, Washington, DC 20505, via facsimile at (703) 613–3007, or via telephone at (703) 613–1287. Collect calls cannot be accepted.

(c) If you are a FOIA requester with a concern about the service you received from the CIA or a member of the public with a suggestion, comment, or complaint regarding the Agency's administration of the FOIA, please direct your concern to the FOIA Public Liaison, Central Intelligence Agency, Washington, DC 20505, via facsimile at 703–613–3007, or via telephone at 703–613–1287. Collect calls cannot be accepted.

4. Revise § 1900.04 to read as follows:

§ 1900.04 Suggestions and complaints.

The CIA remains committed to administering a results-oriented and citizen-centered FOIA program, to processing requests in an efficient, timely and appropriate manner, and to working with requesters and the public to continuously improve Agency FOIA operations. The Agency welcomes suggestions, comments, or complaints regarding its administration of the FOIA. Members of the public shall address all such communications to the FOIA Public Liaison as specified at 32 CFR 1900.03. The Agency will respond as determined feasible and appropriate under the circumstances. Requesters seeking to raise concerns about the service received from the CIA FOIA Requester Service Center may contact the FOIA Public Liaison after receiving an initial response from the CIA FOIA Requester Service Center. The FOIA Public Liaison shall assist in the appropriate resolution of any disputes between a FOIA requester and the Agency.

§ 1900.11 [Amended]

5. Revise § 1900.11 to read as follows:

§ 1900.11 Preliminary information.

Members of the public shall address all communications as specified at 32 CFR 1900.03. Any Central Intelligence Agency (CIA) office or CIA personnel receiving a written communication from a member of the public that requests information or that references the FOIA shall expeditiously forward the communication to the CIA Information and Privacy Coordinator. The CIA will not accept a request for information under the FOIA or an appeal of an adverse determination submitted by a member of the public who owes outstanding fees for information services at this or other federal agencies

and will terminate the processing of any pending requests submitted by such persons to the CIA or to another agency.

6. Revise § 1900.12 to read as follows:

§ 1900.12 Requirements as to form and content.

(a) *Required information.* Requesters should identify their written communication as a request for information under the FOIA. Requests must reasonably describe the records of interest sought by the requester. This means that the records requested must be described sufficiently so that Agency professionals who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. All requesters are encouraged to be as specific as possible in describing the records they are seeking by including the date or date range, the title of the record, the type of record (such as memorandum or report), the specific event or action to which the record refers, and the subject matter, but requests for electronic communications must specify the dates and parties. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

(b) *Additional information for fee determination.* In addition, a requester should provide sufficient information to allow us to determine the appropriate fee category. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(c) *Otherwise.* The CIA FOIA Requester Service Center may contact a requester to seek additional or clarifying information or to assist the requester in reformulating his or her request when the request does not meet the requirements of these regulations. A requester seeking to narrow or further define the nature or scope of his or her request may contact the CIA FOIA Requester Service Center as specified at 32 CFR 1900.03.

§ 1900.13 [Amended]

7. In § 1900.13 amend paragraph (g) in the table by revising the figure ''.10'' to read ''.50'' in entry for ''Photocopy (standard or legal)''.

8. Amend § 1900.33 by revising paragraph (b) to read as follows:

§ 1900.33 Allocation of resources; agreed extensions of time.

* * * * *

(b) *Discharge of FOIA responsibilities.* The Chief FOIA Officer shall monitor the Agency's compliance with the requirements of the FOIA and administration of its FOIA program. The Chief FOIA Officer shall keep the D/CIA, the General Counsel of the CIA, and other officials appropriately informed regarding the Agency's implementation of the FOIA and make recommendations, as appropriate. The Chief FOIA Officer shall designate one or more CIA FOIA Public Liaisons. The CIA FOIA Public Liaison shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes between requesters and the Agency. Components shall exercise due diligence in their responsibilities under the FOIA. Components must allocate a reasonable level of resources to process accepted FOIA requests and administrative appeals on a ''first in, first out'' basis using two or more processing queues based on the amount of work or time or both involved to ensure that smaller as well as larger cases receive equitable attention, except that when a request for expedited processing has been granted under these regulations components must move that request to the front of the processing queue.

* * * * *

§ 1900.34 [Amended]

9. Amend § 1900.34 by removing and reserving paragraph (a).

10. Revise § 1900.41 to read as follows:

§ 1900.41 Designation of authority to hear appeals.

(a) *Agency Release Panel (ARP).* Appeals of initial adverse decisions under the FOIA shall be reviewed by the ARP which shall issue the final Agency decision.

(b) *ARP Membership.* The ARP is chaired by the Chief, Information Review and Release Group, Information Management Services, and composed of the Information Review Officers from the various Directorates and the Director, Central Intelligence Agency area, as well as the representatives of the various release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP.

§ 1900.43 [Removed and Reserved]

11. Remove and reserve § 1900.43.

12. Amend § 1900.44 by revising paragraph (b) and removing and reserving paragraph (c).

The revision reads as follows:

§ 1900.44 Action by appeals authority.

* * * * *

(b) *Decision:* The ARP shall meet on a regular schedule and may take action when a simple majority of the total membership is present. Issues shall be decided by a majority of the members present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the Executive Secretary of the ARP, refer such matters to the Director, Information Management Services (D/IMS) for decision. In the event of a disagreement with any decision by D/IMS, Directorate heads may appeal to the Associate Deputy Director, CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

13. Revise § 1900.45 to read as follows:

§ 1900.45 Notification of decision and right of judicial review.

The Executive Secretary of the ARP shall promptly prepare and communicate the final Agency decision to the requester. With respect to any decision to deny requested information, or any decision that is deemed to be a denial of requested information, that correspondence shall state the reasons for the decision, and include a notice of a right to judicial review.

Dated: August 10, 2011.

Joseph W. Lambert,

Director, Information Management Services.

[FR Doc. 2011–21577 Filed 9–22–11; 8:45 am]

BILLING CODE 6310–02–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1901

Privacy Act

AGENCY: Central Intelligence Agency.

ACTION: Proposed rule.

SUMMARY: Consistent with the Privacy Act (PA), the Central Intelligence Agency (CIA) has undertaken and completed a review of its public PA regulations that govern certain aspects of its processing of PA access and amendment requests. As a result of this review, the Agency proposes to revise its PA regulations to more clearly reflect the current CIA organizational structure and policies and practices, and to eliminate ambiguous, redundant and obsolete regulatory provisions. As required by the PA, the Agency is providing an opportunity for interested persons to submit comments on these proposed regulations.

DATES: Submit comments on or before November 22, 2011.

ADDRESSES: Send comments to the Director, Information Management

Services, Central Intelligence Agency, Washington, DC 20505, or fax to (703) 613–3020.

FOR FURTHER INFORMATION CONTACT: Joseph W. Lambert, (703) 613–1379.

SUPPLEMENTARY INFORMATION: Consistent with the Privacy Act (PA), the CIA has undertaken and completed a review of its public PA regulations. As a result of this review, the Agency proposes to revise its PA regulations to update the title of the head of the CIA and to streamline the appeals structure.

List of Subjects in 32 CFR Part 1901

Classified information, Privacy Act.

As stated in the preamble, the CIA proposes to amend 32 CFR part 1901 as follows:

PART 1901—PUBLIC RIGHTS UNDER THE PRIVACY ACT OF 1974

1. The authority citation for part 1901 is revised to read as follows:

Authority: National Security Act of 1947, as amended; Central Intelligence Agency Act of 1949, as amended; Privacy Act, as amended.

2. Amend § 1901.02, by adding paragraphs (o) and (p) to read as follows:

§ 1901.02 Definitions.

* * * * *

(o) *Director of Central Intelligence Agency* means the head of the Central Intelligence Agency.

(p) *Agency Release Panel (ARP)* refers to the Agency's forum for reviewing information review and release policy, the adequacy of resources available to all Agency declassification and release programs, and hearing appeals in accordance with this section.

§ 1901.41 [Amended]

3. Revise § 1901.41 to read as follows:

§ 1901.41 Designation of authority to hear appeals.

(a) *Agency Release Panel (ARP).* Appeals of initial adverse decisions under the Privacy Act shall be reviewed by the ARP which shall issue the final Agency decision.

(b) *ARP Membership.* The ARP is chaired by the Chief, Information Review and Release Group, Information Management Services, and composed of the Information Review Officers from the various Directorates and the Director, Central Intelligence Agency (D/CIA) areas, as well as the representatives of the various release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP.

4. In § 1901.42, revise paragraph (d) to read as follows:

§ 1901.42 Right of appeal and appeal procedures.

* * * * *

(d) *Receipt, recording, and tasking.* The Agency shall promptly record each administrative appeal, acknowledge receipt to the requester in writing, and thereafter affect the necessary taskings to the Director(s) in charge of the directorate(s) which originated or has an interest in the record(s) subject to the appeal. As used herein, the term Director in charge of a directorate includes an equivalent senior official within the D/CIA area, as well as a designee known as the Information Review Officer for a directorate or area.

§ 1901.43 [Removed and Reserved]

5. Remove and reserve § 1901.43

6. In § 1901.44, revise paragraph (b) and remove and reserve paragraph (c) to read as follows:

§ 1901.44 Action by appeals authority.

* * * * *

(b) *Decision.* The Agency Review Panel (ARP) shall meet on a regular schedule and may take action when a simple majority of the total membership is present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the Executive Secretary of the ARP, refer such matters to the Director, Information Management Services (D/IMS) for decision. In the event of a disagreement with any decision by D/IMS, Directorate heads may appeal to the Associate Deputy Director, CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

§ 1901.45 [Amended]

7. In § 1901.45, revise paragraph (a) to read as follows:

§ 1901.45 Notification of decision and right of judicial review.

(a) *In general.* The Executive Secretary of the Agency Review Panel shall promptly prepare and communicate the final Agency decision to the requester. With respect to any decision to deny a request, that correspondence shall state the reasons for the decision and include a notice of a right to seek judicial review.

* * * * *

Dated: August 10, 2011.

Joseph W. Lambert,

Director, Information Management Services.

[FR Doc. 2011–21575 Filed 9–22–11; 8:45 am]

BILLING CODE 6310–02–P

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2011–OS–0005]

RIN 1894–AA02

State Fiscal Stabilization Fund Program and Discretionary and Other Formula Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed revisions to certain data collection and reporting requirements, and proposed priority.

SUMMARY: The Secretary of Education (Secretary) established requirements for the State Fiscal Stabilization Fund (SFSF) program in a notice of final requirements, definitions, and approval criteria published in the **Federal Register** on November 12, 2009 (November 2009 Notice). In this notice, the Secretary proposes to revise some of those requirements. In a separate notice of interim final requirement, the Secretary is extending to January 31, 2012, the deadline by which a State must collect and publicly report data and information under the SFSF program.

In addition, the Secretary proposes in this notice to establish a priority that the U.S. Department of Education (Department) may use, as appropriate, in any future discretionary grant competitions. The Department would give a priority to States that have developed and implemented the statewide longitudinal data system (SLDS) required under SFSF Indicator (b)(1) on or before the applicable deadline.

Through this notice, we also remind grantees that under its current authority, the Department may identify grantees as high risk and impose sanctions on them for failing to meet programmatic requirements. In addition, the Department is proposing that it may take enforcement action against a State educational agency (SEA) under certain circumstances where a State fails to meet the requirements of Indicators (b)(1), (c)(11), or (c)(12).

DATES: We must receive your comments on or before October 24, 2011.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term ''State Fiscal Stabilization Fund—Proposed Revisions'' at the top of your comments.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed revisions to certain data collection and reporting requirements and proposed priority, address them to Office of the Deputy Secretary (Attention: State Fiscal Stabilization Fund Proposed Revisions Comments), U.S. Department of Education, 400 Maryland Avenue, SW., room 7E214, Washington, DC 20202–6200.

• *Privacy Note:* The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: James Butler, State Fiscal Stabilization Fund Program, U.S. Department of Education, 400 Maryland Ave., SW., room 7E214, Washington, DC 20202–0008. Telephone: (202) 260–9737 or by e-mail: *SFSFcomments@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final revisions to certain data collection and reporting requirements, and final priority, we urge you to identify clearly the specific proposal that each comment addresses.

We invite you also to assist us in complying with the specific requirements of Executive Order 12866 and Executive Order 13563 and their overall requirements of reducing regulatory burden that might result from these proposed revisions to certain data collection and reporting requirements and proposed priority. Please suggest further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the public comments in person in room 7E214, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The SFSF program provided approximately $48.6 billion in formula grants to States to help stabilize State and local budgets in order to minimize and avoid reductions in education and other essential services, in exchange for a State's commitment to advance education reform in four key areas: (1) Achieving equity in the distribution of teachers; (2) improving the collection and use of data; (3) standards and assessments; and (4) supporting struggling schools.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Title XIV—State Fiscal Stabilization Fund, Pub. L. 111–5; 20 U.S.C. 1221e–3 and 3474.

Proposed Revisions to Reporting Requirements

Background

Section 14005(d) of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA) requires a State receiving funds under the SFSF program to provide assurances in four key areas of education reform: (1) Achieving equity in teacher distribution; (2) improving collection and use of data; (3) standards and assessments; and (4) supporting struggling schools. In the November 2009 Notice (74 FR 58436), we established specific data and information requirements (assurance indicators and descriptors) that a State must meet with respect to the statutory assurances. We also established specific requirements for the plans that a State had to submit as part of its application for the second phase of funding under the SFSF program, describing the steps it would take to collect and publicly report the required data and other information. As we explained in the November 2009 Notice, these two sets of requirements provide transparency on the extent to which a State is implementing the actions for which it provided the assurances. Increased access to and focus on these data better enable States and other stakeholders to identify strengths and weaknesses in education systems and to determine where concentrated reform effort is warranted.

We are taking this action in response to the January 18, 2011 Executive Order 13563 entitled ''Improving Regulation and Regulatory Review'' and the February 28, 2011 Memorandum from the President to executive departments and agencies entitled ''Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments.'' These documents direct each Federal executive department and agency to review periodically its existing significant regulations in order to determine whether any of those regulations should be modified, streamlined, expanded, or repealed so as to make the department's or agency's regulatory program more effective or less burdensome in achieving regulatory objectives. These proposed modifications would address concerns raised by some States regarding their capacity to meet the requirements in the November 2009 Notice.

As a result of a regulatory review of the SFSF program requirements, the Secretary is publishing elsewhere in this issue of the **Federal Register** an IFR that extends to January 31, 2012 the deadline for States to collect and publicly report data and information under the program. In addition, in this notice, the Secretary proposes to: (1) Eliminate the requirement for States to report data annually for Indicators (c)(1) through (c)(9) and (d)(1) through (d)(6); (2) extend to December 31, 2012, upon submission of an approvable request by a State, the deadline for meeting the requirements under Indicators (b)(1) and (c)(12); (3) extend to December 31, 2012, upon submission of an approvable request by a State, the deadline for publicly reporting or developing the capacity to collect and publicly report student enrollment data under Indicator (c)(11) for high school graduates who enroll in an in-State public institution of higher education (IHE); and (4) apply an alternative standard, upon submission of an approvable request by a State, by which a State may meet the Indicator (c)(11) data collection and reporting requirements for high school graduates who enroll in private or out-of-State public IHEs. The Secretary proposes to establish December 31, 2012 as the

deadline by which a State must meet the requirements of the Indicator (c)(11) alternative standard.

In addition to these revisions, the Secretary proposes to establish a priority that the Department may use in future discretionary grant competitions, for States that have met the requirements of Indicator (b)(1) on or before the applicable deadline. The Secretary also is reminding States of possible sanctions that may be imposed on them for failing to meet SFSF collection and reporting requirements. Further, the Secretary is proposing to have the authority to extend those sanctions to SEAs in States that have received an extension of the deadline to December 31, 2012 for Indicators (b)(1), (c)(11), or (c)(12) but fail to meet the revised deadline or that have received permission to use the alternative standard for Indicator (c)(11) but fail to meet the requirements of that standard by the deadline.

We note that other than the revised January 31, 2012 deadline for collecting and publicly reporting data that has been established in the IFR, or unless specifically referenced in this notice, we are not proposing to modify any other SFSF requirements and those requirements remain in effect as originally established.

In addition, we note that where the SFSF indicators make use of information in ''Existing Collections'' (see column 4 of the table in Section I of *State Fiscal Stabilization Fund: Summary of Final Requirements* at *http://www2.ed.gov/programs/statestabilization/summary-requirements.doc*), the modification of an SFSF indicator does not affect other Federal requirements for those collections that are established under separate legal authority. Some of the data that States submit through the Department's ED*Facts* system to meet requirements established under other authorities (*e.g.,* Title I accountability data) are also reported publicly by States to meet the requirements of certain SFSF indicators. Those requirements established by other authorities are not affected by the modification of any SFSF indicator.

Proposed Revisions

Proposed Elimination of Annual Reporting Requirements for Indicators (c)(1) Through (c)(9) and (d)(1) Through (d)(6)

Currently, each State is required to collect and publicly report, at least annually, the data and other information required by Indicators (c)(1) through (c)(9) and (d)(1) through (d)(6). Indicators (c)(1) through (c)(9) (standards and assessments indicators) require each State to collect and publicly report data and other information annually on, among other things, whether students are provided high-quality State assessments; whether students with disabilities and limited English proficient students are included in State assessment systems; and whether the State makes information available regarding student academic performance in the State compared to the academic performance of students in other States.

Indicators (d)(1) through (d)(6) (supporting struggling schools indicators) require a State to collect and publicly report data and other information annually on, among other things, the progress of certain groups of schools in the State on State assessments in reading/language arts and mathematics and on the extent to which reforms to improve student academic achievement are implemented in the persistently lowest-achieving schools in the State.

A majority of States have collected and publicly reported the data and information required by Indicators (c)(1) through (c)(9) and (d)(1) through (d)(6). The data and information highlight the progress each State is making to address potential inequities in standards and assessments and to inform the public on the extent to which reforms to improve student academic achievement are implemented in the persistently lowest-achieving schools in the State. However, much of these data are now also collected through other Department information collections. For example, data on the participation of students with disabilities, by assessment type, is provided by States as part of the Elementary and Secondary Education Act (ESEA) Consolidated State Performance Report (CSPR) and the annual assessment data reporting under the Individuals with Disabilities Education Act. The CSPRs are available at *http://www2.ed.gov/admins/lead/account/consolidated/sy08-09part1/index.html*. Data are also available to the public about the participation of students with disabilities by assessment type at *https://www.ideadata.org/PartBData.asp*. In addition, data about the performance of students on statewide assessments, by subgroup (including students with disabilities and limited English proficient students), are publicly available at *http://www.eddataexpress.ed.gov/*.

Under the IFR, States have until January 31, 2012, to collect and publicly report the data and information required under the SFSF indicators and descriptors, including Indicators (c)(1) through (c)(9) and (d)(1) through (d)(6). However, given the availability of these data through other sources, we do not believe it continues to be necessary to have States separately collect and report data for Indicators (c)(1) through (c)(9) and Indicators (d)(1) through (d)(6) more than one time under the SFSF program. Any State that has already collected and publicly reported these data would not be required to take any further actions relative to these indicators for the purposes of the SFSF program. Any State that has not already provided data under these Indicators must do so by the January 31, 2012 deadline.

Proposed Extension of Deadline for Indicators (b)(1) and (c)(12)

Indicator (b)(1) requires a State to identify which of the 12 elements in section 6401(e)(2)(D) of the America COMPETES Act are included in its SLDS. Any State that did not have an SLDS that included all 12 elements was required to provide the Department, as part of its SFSF Phase 2 application, a plan for fully developing and implementing such a system by September 30, 2011.

Indicator (c)(12) requires each State to collect and publicly report course completion data for high school graduates who enroll in a public IHE in the State.[1] If, at the time of submission of its SFSF Phase 2 application, a State lacked the capacity to collect and publicly report the specified course completion data it had to provide the Department with a plan for how it would collect and report those data or develop the capacity to do so by September 30, 2011.

As the Department noted in its November 2009 Notice, timely and reliable information from across sectors will facilitate program evaluation and help determine whether a program is improving outcomes for students. Thus, it is imperative that States complete the development and implementation of an SLDS that includes the 12 elements required under the America COMPETES Act. Further, a State must have an SLDS to be able to report the course

[1] Specifically, Indicator (c)(12) requires each State to provide for the State, for each LEA in the State, for each high school in the State and, at each of these levels, by student subgroup (consistent with section 1111(b)(2)(C)(v)(II) of the ESEA), of the students who graduate from high school consistent with 34 CFR 200.19(b)(1)(i) who enroll in a public IHE (as defined in section 101(a) of the Higher Education Act) in the State within 16 months of receiving a regular high school diploma, the number and percentage (including numerator and denominator) who complete at least one year's worth of college credit (applicable to a degree) within two years of enrollment in the IHE.

completion data required under Indicator (c)(12) that provides information on how effectively schools in the State are preparing their students for postsecondary education.

The Department recognizes the challenges and competing priorities that many States have faced in trying to meet the requirements of Indicators (b)(1) and (c)(12) by the September 30, 2011 deadline. During program monitoring, States have expressed concerns about their ability to fully develop and implement an SLDS by the established deadline. In addition, many States indicated in their March 2011 Amended Application for Funding Under the State Fiscal Stabilization Fund Program that they still had not fully incorporated the following elements into their SLDS: (1) Student-level transcript information, including data on courses completed and grades earned (Element 9); (2) information regarding the extent to which students transition successfully from secondary school to postsecondary education, including whether students enroll in remedial coursework (Element 11); and (3) other information determined necessary to address alignment and adequate preparation for success in postsecondary education (Element 12). Further, most States reported in their amended SFSF application that they do not yet have the capacity to collect and publicly report the course completion data required under Indicator (c)(12).

As a result, in the IFR, the Department is extending to January 31, 2012 the deadline by which States must meet the requirements of the SFSF indicators and descriptors, including Indicators (b)(1) and (c)(12). Further, the Department proposes in this notice to extend to December 31, 2012, upon submission of an approvable request by a State, the deadline for the development and implementation of an SLDS that includes the 12 elements included in the America COMPETES Act. In addition, the Department proposes to extend to December 31, 2012, upon submission of an approvable request by a State, the deadline by which a State must have the capacity to collect and publicly report the required course completion data under Indicator (c)(12).

The Department proposes that, to be approvable, an extension request must provide the specific information described under the heading *Proposed Requirements for Requests for Extensions to December 31, 2012, of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard.*

Proposed Revisions to Requirements Under Indicator (c)(11)

Under the requirements for Indicator (c)(11) established in the November 2009 Notice, each State must (1) Collect and publicly report, by September 30, 2011, data on the number and percentage of high school graduates who enroll in IHEs—public or private, in-State or out-of-State; or (2) submit to the Department a plan describing how the State would develop, by September 30, 2011, the capacity to do so. Further, under those requirements, each State must submit to the Department, by September 30, 2011, evidence demonstrating that it has developed the capacity to collect and publicly report the data.

A number of States have raised concerns about the challenges in collecting and publicly reporting student enrollment data. In their March 2011 SFSF amended applications, 43 States indicated that they did not yet have the capacity to collect and publicly report those data. Therefore, in the IFR, the Department is extending until January 31, 2012, the deadline for States to comply with the SFSF indicators and descriptors, including Indicator (c)(11). Further, in this notice the Department proposes to extend to December 31, 2012, upon submission of an approvable request by a State, the deadline by which a State must collect and publicly report or have the capacity to collect and publicly report the student enrollment data required under Indicator (c)(11) for high school graduates who attend an in-State public IHE. The Department would grant an extension to December 31, 2012 only to a State that submits a request that contains the specific information proposed under the heading *Proposed Requirements for Requests for Extensions to December 31, 2012, of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard.*

The Department acknowledges that obtaining student enrollment data from private and out-of-State public IHEs can be particularly challenging. Therefore, the Department also proposes to establish an alternative standard by which a State may meet the Indicator (c)(11) data collection and reporting requirements with respect to high school graduates who enroll in private or out-of-State public IHEs. While such data are essential in determining how well an LEA or secondary school is preparing its students for postsecondary education, some States may need additional time to develop fully the capacity to collect and report these data. Under the alternative standard, a State would have to increase, by December 31, 2012, its current capacity to collect and publicly report the required student enrollment data for high school graduates who attend a private or an out-of-State public IHE. A State would not be required to be fully capable of collecting and reporting these data by December 31, 2012. For the purposes of the alternative standard, a State would be considered to be making acceptable progress in increasing its capacity to collect and publicly report student enrollment data for high school graduates who enroll in private or out-of-State public IHEs through such activities as: (1) Entering into data reciprocity agreements with private in-State IHEs that receive any State funds, including those for student financial aid, research, or any other activities; (2) entering into data reciprocity agreements with private in-State IHEs over which the State exercises significant oversight, such as serving as an accrediting body; (3) entering into data reciprocity agreements with geographically contiguous States or States with which it has tuition reciprocity agreements; or (4) conducting a data analysis to determine the out-of-State IHEs where large numbers of the State's high school graduates enroll.

The Department proposes that States that use the alternative standard for Indicator (c)(11) be required to publicly report, by December 31, 2012, the following—

(1) For each in-State private IHE—

(a) Whether the State provides funding to the IHE;

(b) Whether the State has a data-sharing agreement in place with the IHE and, if so, whether the data-sharing agreement enables the State to track its recent high school graduates; and

(2) For each out-of-State private or out-of-State public IHE with which the State has a data-sharing agreement—

(a) Whether the State provides funding to the IHE; and

(b) Whether the data-sharing agreement enables the State to track its recent high school graduates.

The Department proposes to permit a State that provides the specific information described under the heading *Proposed Requirements for Requests for Extensions to December 31, 2012, of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard* to use the alternative standard.

Proposed Requirements for Requests for Extensions to December 31, 2012, of Deadlines for Indicators (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard

Because of an SEA's significant role in carrying out education reform activities in a State, including developing and implementing an SLDS, the Department proposes that any request for an extension to December 31, 2012, of the deadline for Indicator (b)(1), (c)(11), or (c)(12), as well as any request to use the alternative standard for Indicator (c)(11), must be submitted jointly by the Governor and the Chief State School Officer. Further, the Secretary proposes that an extension request or a request to use the alternative standard must be submitted by the deadline that the Department will establish in the notice of final revisions to certain data collection and reporting requirements, and final priority. The additional requirements for these requests are as follows:

A. Indicator (b)(1) Extension Requests

The Secretary proposes that a State must provide the following information when requesting an extension of the deadline for developing and implementing an SLDS under Indicator (b)(1) that includes the 12 elements required by the America COMPETES Act:

(1) An identification of the elements in the America COMPETES Act that the State has implemented to date as part of its SLDS; and

(2) An assurance signed by the Governor and the Chief State School Officer that the State will—

(i) Incorporate the remaining elements into its SLDS by the December 31, 2012, deadline; and

(ii) Provide, within 60 days of submission of the request, a revised plan for incorporating those elements by the deadline.

B. Indicator (c)(11) Extension Requests

The Secretary proposes that a State must provide the following information when requesting an extension of the deadline for collecting and publicly reporting under Indicator (c)(11) student enrollment data for high school graduates who enroll in an in-State public IHE:

(1) A description of the State's current capacity to collect and publicly report such student enrollment data; and

(2) An assurance signed by the Governor and the Chief State School Officer that the State will—

(i)(A) Collect and publicly report by December 31, 2012, student enrollment data for high school graduates who attend an in-State public IHE; or

(B) Develop the capacity to collect and publicly report those data by December 31, 2012; and

(ii) Provide, within 60 days of submission of the request, a revised plan for how the State will—

(A) Collect and publicly report the data by December 31, 2012; or

(B) Develop the capacity to collect and publicly report those data by December 31, 2012.

C. Indicator (c)(12) Extension Requests

The Secretary proposes that a State must provide the following information when requesting an extension of the deadline for collecting and publicly reporting under Indicator (c)(12) course completion data for high school graduates who enroll in an in-State public IHE:

(1) A description of the State's current capacity to collect and publicly report such course completion data; and

(2) An assurance signed by the Governor and the Chief State School Officer that the State will—

(i)(A) Collect and publicly report, by December 31, 2012, course completion data for high school graduates who attend an in-State public IHE; or

(B) Develop the capacity to collect and publicly report, by December 31, 2012, such data; and

(ii) Provide, within 60 days of submission of the request, a revised plan for how the State will—

(A) Collect and publicly report the data by December 31, 2012; or

(B) Develop the capacity to collect and publicly report such data by December 31, 2012.

D. Indicator (c)(11) Alternative Standard Requests

The Secretary proposes that a State must provide the following information when requesting permission to use the alternative standard to satisfy the Indicator (c)(11) requirements to collect and publicly report student enrollment data for high school graduates who enroll in private or out-of-State public IHEs:

(1) A description of the State's current capacity to collect and publicly report such student enrollment data; and

(2) An assurance signed by the Governor and the Chief State School Officer that the State will—

(i)(A) Collect and publicly report, by December 31, 2012, student enrollment data for high school graduates who enroll in private or out-of-State public IHEs; or

(B) Increase its current capacity to collect and publicly report such data by December 31, 2012, and, by that date, publicly report, the following—

(1) For each in-State private IHE—

(a) Whether the State provides funding to the IHE;

(b) Whether the State has a data-sharing agreement in place with the IHE and, if so, whether the data-sharing agreement enables the State to track its recent high school graduates; and

(2) For each out-of-State private or out-of-State public IHE with which the State has a data-sharing agreement, whether individually or through a State agency or consortium—

(a) Whether the State provides funding to the IHE; and

(b) Whether the data-sharing agreement enables the State to track its recent high school graduates;

(ii) Provide, within 60 days of submission of the request, a revised plan for how the State will—

(A) Collect and publicly report the data by December 31, 2012; or

(B) Increase its current capacity to collect and report those data by December 31, 2012.

Proposed Requirements for Revised Plans for Indicator (b)(1), (c)(11), or (c)(12)

The Department proposes that the revised plans for Indicator (b)(1), (c)(11), or (c)(12) must include the following information:

(a) A detailed description of the steps that the State will take to ensure that the requirements of the indicator will be met by December 31, 2012, including a reasonable timeline for those actions;

(b) Identification of the agency or agencies in the State responsible for the development and implementation of the revised plan; and

(c) An overall budget, including the funding sources, that is sufficient to support the development and implementation of the revised plan.

Proposed Priority

This notice contains one proposed priority.

Proposed Priority—Developing and Implementing a Statewide Longitudinal Data System That Includes the 12 Required Elements

Background: A State that develops and implements an SLDS that includes the 12 elements required under the America COMPETES Act is more likely to effectively implement education reforms. As a result, a State that meets the SLDS requirements of the SFSF program is more likely to meet the goals of other Federal programs that support efforts to improve the quality of instruction and raise student academic achievement.

Given the importance of full implementation of a complete SLDS system, the Secretary is proposing a priority for a State that has met the requirements of Indicator (b)(1) as established under the SFSF program.

Proposed Priority: The Secretary is proposing a priority for a State that has met the requirements of SFSF Indicator (b)(1) on or before the applicable deadline.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Enforcement of SFSF Requirements; Proposed Authority To Take Enforcement Action Against SEAs

The Department only extends the deadline for complying with program requirements when appropriate. The Department is proposing to extend the deadline under this notice to ensure full implementation of key SFSF program requirements. For example, the development and implementation of an SLDS are integral to State and local efforts to improve student academic achievement. In light of the proposed deadline extension, we remind States that the Department has a wide range of actions that it can take to enforce program requirements. For example, the Department has the authority under the provisions of Part E of the General Education Provisions Act (GEPA) (20 U.S.C. 1234 *et seq.*) to take the following enforcement actions: the recovery of funds (section 452 of GEPA), the withholding of funds (section 455 of GEPA), or the establishment of a compliance agreement (section 457 of GEPA). Additionally, under 34 CFR 80.12, the Department may designate a grantee as high risk for a number of reasons, including failure to comply with the terms and conditions of an award. We also note that, under 34 CFR 75.217, the Department may consider the performance of a grantee when awarding funds in future discretionary grant programs.

As stated previously, the Department proposes that the SEA must jointly request with the Office of the Governor an extension to December 31, 2012, of the January 31, 2012 deadline for Indicators (b)(1), (c)(11), and (c)(12) or the authority to use the alternative standard for Indicator (c)(11). In those cases in which the State has received an extension of a deadline to January 31, 2012 or the authority to use the alternative standard for Indicator (c)(11) but fails to meet the extended deadline or alternative standard, the Department also proposes that it may take enforcement actions against the SEA, including designation as high risk. In such instances the Department would have the authority also to elect not to award funds in a future discretionary grant competition to the SEA.

When implementing enforcement actions, the Department takes into account the specific circumstances of the grantee and the severity of the non-compliance.

Final Revisions to Certain Data Collection and Reporting Requirements and Final Priority

We will announce the final revisions to the SFSF requirements and final priority in a notice in the **Federal Register**. We will determine the final revisions to the requirements and the final priority after considering any comments submitted in response to this notice and other information available to the Department. This notice does not preclude us from proposing additional revisions to the requirements or additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use the priority proposed in this notice, we invite applications through a notice in the **Federal Register.**

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is significant and, therefore, subject to the requirements of the Executive Order and to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an economically significant rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

It has been determined that this regulatory action is significant under paragraph (f)(4) of the Executive order. Accordingly, we have assessed the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action and determined that the benefits justify the costs. Additionally, the Department has determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis, we discuss the need for regulatory action, the regulatory alternatives we considered, and the potential costs and benefits of the proposed action.

Need for Federal Regulatory Action

The proposed revisions in this notice are the result of a regulatory review [2] of the SFSF requirements established in the November 2009 Notice and also a response to concerns raised by States regarding their capacity to implement those requirements fully. The proposed revisions would eliminate requirements that have been identified through the regulatory review as overly burdensome or unnecessary for the achievement of the intended purposes of the SFSF program. The proposed revisions would also modify requirements that have been identified by certain States as not

[2] As discussed elsewhere in this notice, the regulatory review was conducted in response to the January 18, 2011 Executive Order 13563 entitled ''Improving Regulation and Regulatory Review'' and the February 28, 2011 Memorandum from the President to executive departments and agencies entitled ''Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments.''

feasible to meet by the currently established deadline, by extending the deadline for establishing compliance or providing an alternative compliance standard for States that seek that flexibility. The Secretary believes that these revisions are needed in order for the Department to administer the SFSF program in a manner that enables States to provide sufficient transparency on the extent to which they are implementing education reform actions consistent with the assurances provided in their SFSF applications while affording them an appropriate amount of time and flexibility to implement those actions. The Secretary further believes that this notice's proposed requirements for requesting an extension of the deadline for Indicator (b)(1), (c)(11), or (c)(12) or using the Indicator (c)(11) alternative standard, as well as the proposed requirements for revising plans for those indicators, are necessary to ensure that States' actions are consistent with the requirements for those indicators.

Regulatory Alternatives Considered

An alternative to promulgation of the proposed revisions in this notice would be to take no regulatory action and, instead, take enforcement action, such as recovering or withholding Department funds or establishing compliance agreements, against States that fail to comply with the relevant SFSF requirements established in the November 2009 Notice. In general, the Secretary believes that the latter approach would unfairly punish States that the Department believes, based on available information on implementation of SFSF plans, are making a good-faith effort to fully develop their statewide longitudinal data systems and their capacity to collect and report data on student postsecondary enrollment and persistence, but need more time to comply with the SFSF requirements. That said, the Secretary believes, for reasons discussed elsewhere in this notice, that States must fully develop statewide longitudinal data systems and may place on high-risk status those States that fail to comply with the requirements of Indicator (b)(1) by the current or (if approved for the State) extended deadline.

With respect to Indicator (c)(11), the Department considered proposing only an extension of the deadline for collecting and reporting student enrollment data for high school graduates who attend IHEs, but concluded that extending the deadline for the public, in-State IHEs and providing additional flexibility with the proposed alternative standard for collecting and publicly reporting student enrollment data for high school graduates who attend private and out-of-State public IHEs would better address the capacity concerns raised by States.

Summary of Costs and Benefits

Proposed Revisions to SFSF Indicator Requirements

In the November 2009 Notice, the Department provided detailed estimates of the costs to States, LEAs, and IHEs of complying with the SFSF requirements. We have assessed the potential costs and benefits of the proposed revisions to those requirements in this notice and determined that they would impose no net additional costs to States, LEAs, or IHEs.

On the contrary, the proposed revisions would produce potential net cost savings.[3] For instance, the proposed elimination of the annual reporting requirements for Indicators (c)(1) through (c)(9) and (d)(1) through (d)(6) would confer savings by reducing collection and reporting burden on States and LEAs. Although it would confer some new cost (as discussed in more detail later in this section), the proposed Indicator (c)(11) alternative standard would confer net savings to States using the standard (and to affected LEAs and IHEs) by no longer requiring that those States, at a minimum, fully develop the capacity to collect and report, by September 30, 2011, enrollment data for high school graduates who enroll in private or out-of-State public IHEs. The proposed extensions of the compliance deadlines for Indicators (b)(1), (c)(11), and (c)(12) would not add to the costs of complying with the associated requirements and might result in marginal savings (calculated on a present-value basis) as States would be able to spread the compliance costs over a longer period of time.

Apart from potential cost savings, the benefits of the proposed revisions are, as discussed elsewhere in this notice, simplified and more streamlined SFSF requirements that still provide the Department and the public with useful information on whether States are implementing education reforms consistent with the statutorily required assurances.

States using the proposed Indicator (c)(11) alternative standard would incur minimal new costs. Under the standard, a State would be required to publicly report, by December 31, 2012, information on the extent to which it has data-sharing agreements with private and out-of-State public IHEs that enable the State to track its recent high school graduates and demonstrate certain concrete steps it had taken to increase its capacity to track its high school graduates who enrolled in private and out-of-State public IHEs. We estimate that a State would need, on average, 40 hours to collect and report this information. At $30 per hour, the average cost of doing so is an estimated $1,200.

Based on information available from States on implementation of their SFSF plans, we estimate that 43 States will request use of the Indicator (c)(11) alternative standard. The total estimated cost to States for complying with the proposed Indicator (c)(11) alternative standard reporting requirements is accordingly $51,600 ($1,200 times 43 States).

Proposed Requirements for Requests for Extensions of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard, and Proposed Requirements for Revised Plans for Indicator (b)(1), (c)(11), or (c)(12)

The costs for complying with these proposed requirements would, in general, be minimal. Because States that do not meet the requirements associated with an SFSF indicator or descriptor were already required to submit a plan for achieving compliance that includes progress tracking and providing regular public progress reports, we do not believe that any new effort would be needed in order for a State to determine whether to request an extension of the deadline for Indicator (b)(1), (c)(11), or (c)(12) or use of the Indicator (c)(11) alternative standard.

In requesting a deadline extension or use of the alternative standard, a State would be required to provide a description of its current capacity with respect to the applicable indicator and a signed assurance that it will comply with the revised requirements for the indicator and will submit its plan for doing so to the Department within 60 days of the request. The level of effort needed to meet these requirements would be minimal. We estimate that a State would need, on average, eight hours to complete such a request. At $30 per hour, the average cost of completing a request is an estimated $240.

Based on information available from States on implementation of their SFSF plans, we estimate that 40 States will request an extension of the deadline for

[3] We have not provided estimates of potential cost savings in this notice because we cannot reasonably estimate the amount of funds States have already spent to meet the applicable SFSF requirements.

Indicator (b)(1), 43 States will request an extension of the deadline for Indicator (c)(11), 47 States will request an extension of the deadline for Indicator (c)(12), and 43 States will request use of the Indicator (c)(11) alternative standard. In total, States will complete an estimated 173 requests. At $240 per request, the total estimated cost to States for complying with the proposed requirements for requests is $41,520 ($240 times 173 requests).

A State requesting a deadline extension or the use of the Indicator (c)(11) alternative standard would then be required to submit to the Department, within 60 days, a revised plan with respect to the applicable indicator that includes the specific steps the State will take to meet the revised requirements for the indicator, the budget for developing and implementing the revised plan, and the responsible agency or agencies. The cost of meeting these proposed plan revision requirements should also be minimal. We estimate that a State would need, on average, eight hours to complete a plan revision consistent with the requirements. At $30 per hour, the average cost of completing a plan revision is an estimated $240.

As discussed above, States will complete an estimated 173 total requests for deadline extensions or for use of the Indicator (c)(11) alternative standard. Accordingly, we estimate that States will complete, at most, 173 plan revisions.[4] At $240 per revision, the total estimated cost to States for complying with the proposed plan revision requirements is $41,520 ($240 per revision times 173 requests).

The total estimated cost for complying with the proposed requirements for requests and for plan revisions is accordingly $83,040.

The November 2009 notice detailed the cost of collecting and reporting the information and data associated with Indicators (b)(1), (c)(11), and (c)(12) on an annual basis. We expect that the cost of meeting these requirements will be reduced because most States have completed a substantial amount of the work related to collecting and reporting the required information. However, States requesting an extension of Indicators (b)(1), (c)(11), or (c)(12) will need to report the information and data for an additional year. We discuss the costs associated with reporting these indicators for an additional year below.

We estimate that, on average, a State would need one hour to collect and report the information associated with Indicator (b)(1). This is a one hour reduction from the estimate in the November 2009 Notice because States have indicated that, on average, they have completed 50 percent of the work associated with collecting and reporting this information. Based on information available from States on implementation of their SFSF plans, we expect that 40 States will need to collect and report this information. At $30 per hour, the average cost for collecting and reporting this information is $30. The total estimated cost for complying with the Indicator (b)(1) reporting requirements is $1,200 ($30 per hour times 40 States).

As 9 States have already met the requirement for Indicator (c)(11), we expect that 43 States will need to collect and report the information associated with it, or provide evidence that they have developed the capacity to do so, for students who attend in-State, public IHEs. We estimate that, on average, a State would need 40 hours to meet this requirement. This is a reduction from the average hours per response in the November 2009 Notice because this estimate only includes reporting on students who attend in-State, public IHEs rather than all students enrolled in an IHE. The remaining students will be covered under the (c)(11) alternative standard. At $30 per hour, we estimate that the average cost of meeting this requirement is $1,200. The total estimated cost for States to comply with the requirements for Indicator (c)(11) is $51,600 ($1,200 per State times 43 States).

The 13,409 LEAs located in those 43 States would need to provide information associated with Indicator (c)(11). Based on an estimate of the total number of students enrolled in public IHEs in their home State,[5] and based on the assumption that LEAs could provide this information at a rate of 20 students per hour, we estimate that these LEAs will require a total of 84,584 hours to comply with the requirements for Indicator (c)(11) at a total cost of $2,114,597. Divided by the total number of affected LEAs, we estimate that each LEA would require 6.31 hours to provide this information. This would be a reduction from the average hours per response in the November 2009 Notice because the current estimate only relates to students who attend in-State, public IHEs rather than all students attending an IHE. Information on the remaining students will be covered under the (c)(11) alternative standard. At $25 per hour, the average cost per LEA of meeting the requirements of this Indicator is approximately $158.

Again, based on our estimate of the total number of students enrolled in public IHEs in their home State and the assumption that IHEs could provide this information at a rate of 20 students per hour, we estimate that a total of 84,584 hours would be required for the 1,676 IHEs in the 43 affected States to respond to this requirement. On average, each IHE would need 50.47 hours to collect and report the information associated with Indicator (c)(11). This would be an increase in the average hours per response in the November 2009 Notice because this estimate only relates to students who attend in-State public IHEs rather than all students attending an IHE. The remaining students will be covered under the (c)(11) alternative standard. The average burden per response increased from the burden estimated in the November 2009 Notice because the analysis now accounts for in-State public IHEs in the 43 States that have not yet met this requirement. Since 74 percent of freshmen attend in-State public IHEs, the burden in this notice is higher because it is no longer shared with private and out-of-State IHEs, which led to lower overall burden that we estimated for all IHEs in the November 2009 Notice. We expect that 1,676 IHEs will need to provide this information. At $25 per hour, the average cost per IHE for collecting and reporting this information is $1,261.75. The total estimated cost for IHEs to

[4] A State requesting both an extension of the deadline for Indicator (c)(11) (as it applies to data on student enrollment in in-State public IHEs) and use of the alternative standard for that indicator (as it applies to data on student enrollment in private and out-of-State public IHEs) could address both of these requests in a single plan revision for the indicator. Consequently, the total number of completed plan revisions will almost certainly be lower than this estimate.

[5] According to the Digest of Education Statistics, 2009, 2,240,414 first-time freshmen enrolled in public, degree-granting IHEs in fall 2008, which represented 74 percent of all first-time freshmen. See *http://nces.ed.gov/programs/digest/d09/tables/dt09_199.asp.* Also in fall 2008, 2,109,931 freshmen who graduated from high school within the last 12 months attended degree-granting IHEs in their home State, which represented 81 percent of all freshmen. See *http://nces.ed.gov/programs/digest/d09/tables/dt09_223.asp.* 1. An estimate of the number of first-time freshmen enrolled in public, degree-granting IHEs in their home State can be derived two ways. Applying the percentage of first-time freshmen attending public degree-granting IHEs to the number of first-time freshmen attending an IHE in their home State yields an estimate of 1,508,484, and applying the percentage of first-time freshmen attending an IHE in their home State to the number of first-time freshmen attending public degree-granting IHEs yields an estimate of 2,169,077. For the purposes of this estimate, the Department chooses the midpoint of these figures, which is 1,838,780. Applying the estimate (described earlier) that 94 percent of all first-time postsecondary students graduated from public schools, the Department estimates that 1,691,678 public high school graduates enroll in public degree-granting IHEs in their home State.

comply with the reporting requirements for Indicator (c)(11) is $2,114,597.

The total estimated cost for complying with the reporting requirements in Indicator (c)(11) is $4,280,794.

Based on information provided by the States, we expect that 47 States will need to collect and report the information associated with Indicator (c)(12). We estimate that, on average, a State would need 20 hours to collect and report the information. This represents a 20 hour reduction from our estimate in the November 2009 Notice because States have indicated that, on average, they have completed 50 percent of the work associated with this Indicator. At $30 per hour, the average cost for collecting and reporting this information is $600. The total estimated cost for States to comply with the reporting requirements for Indicator (c)(12) is $28,200 ($600 per State times 47 States).

The 1,555 IHEs located in these States would be required to report information on the number of students who have completed at least one year's worth of college credit within two years of enrollment in the IHE. Based on data from the Digest of Education Statistics, we estimate that 1,140,855 first-time freshmen are enrolled in degree-granting in-State public IHEs in the 47 States that have not yet met this requirement. We estimate that IHEs could provide this information at a rate of 20 students per hour, which leads to approximately 57,043 hours of total effort across the affected IHEs at an estimated cost of $1,426,069. By dividing this total number of hours by the 1,555 public IHEs in the 47 States, we estimate that, on average, an IHE would need 36.68 hours to collect and report the information associated with Indicator (c)(12). This represents a reduction from the average hours per response that we estimated in the November 2009 Notice because some States with higher than average percentages of in-State students have already completed this work. We estimate a reduced average response time after excluding the IHEs from States that have completed the work from the calculation. At $25 per hour of IHE effort, we estimate that the average cost for collecting and reporting this information is $917 per IHE.

The total estimated cost for complying with the reporting requirements in Indicator (c)(12) is $1,454,269. The total estimated cost for complying with the collection and reporting requirements associated with (b)(1), (c)(11), and (c)(12) is accordingly $5,736,263.

The total estimated cost for complying with those collection and reporting requirements and the proposed requirements in this notice is $5,870,903.

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this regulatory action will affect are small LEAs receiving funds under this program and small IHEs.

This regulatory action will not have a significant economic impact on small LEAs because they will be able to meet the costs of compliance with this regulatory action using the funds provided under this program.

With respect to small IHEs, the U.S. Small Business Administration Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Based on data from the Department's Integrated Postsecondary Education Data System (IPEDS), up to 427 small IHEs with revenues of less than $5 million may be affected by these requirements; only 33 of these IHEs are public. These small IHEs represent only 13 percent of degree-granting IHEs. In addition, only 98,032 students (0.5 percent) enrolled in degree-granting IHEs in fall 2007 attended these small institutions; just 11,830 of these students are enrolled in small, degree-granting public IHEs. As the burden for indicators (c)(11) and (c)(12) is driven by the number of students for whom IHEs would be required to submit data, small IHEs will require significantly less effort to adhere to these requirements than will be the case for larger IHEs. Based on IPEDS data, the Department estimates that 1,873 of these students are first-time freshmen. As stated earlier in the *Summary of Costs and Benefits* section of this notice, the Department estimates that, as required by indicator (c)(11), IHEs will be able to confirm the enrollment of 20 first-time freshmen per hour. Applying this estimate to the estimated number of first-time freshmen at small IHEs, the Department estimates that these IHEs will need to spend 94 hours to respond to this requirement at a total cost of $2,350 (assuming a cost of $25 per hour).

The effort involved in reporting the number of students enrolling in a public IHE in their home State who complete at least one year's worth of college credit applicable toward a degree within two years as required by indicator (c)(12) will also apply to small IHEs, but will be limited to students who enroll in public IHEs in their home State. As discussed earlier in the *Summary of Costs and Benefits* section of this notice, the Department estimates that 81 percent of first-time freshmen who graduate from public high schools enroll in degree-granting IHEs in their home State. Applying this percentage to the estimated number of first-time freshmen enrolled in small public IHEs (1,873), the Department estimates that small IHEs will be required to report credit completion data for a total of 1,517 students. For this requirement, the Department also estimates that IHEs will be able to report the credit completion status of 20 first-time freshmen per hour. Again, applying this data entry rate to the estimated number of first-time freshmen at small public IHEs in their home State, the Department estimates that these IHEs will need to spend 76 hours to respond to this requirement at a total cost of $1,900. The total cost of these requirements for small IHEs is, therefore, $4,250; $2,068 of this cost will be borne by small private IHEs, and $2,182 of the cost will be borne by small public IHEs. Based on the total number of small IHEs across the Nation, the estimated cost per small private IHE is approximately $10, and the estimated cost per small public IHE is $66. The Department has, therefore, determined that the requirements will not represent a significant burden on small not-for-profit IHEs. It is also important to note that States may use their Government Services Fund allocations to help small IHEs meet the costs of complying with the requirements that affect them, and public IHEs may use Education Stabilization Fund dollars they receive for that purpose.

In addition, the Department believes the benefits provided under this regulatory action will outweigh the burdens on these institutions of complying with the requirements. One of these benefits will be the provision of better information on student success in postsecondary education to policymakers, educators, parents, and other stakeholders. The Department believes that the information gathered and reported as a result of these requirements will improve public accountability for performance; help States, LEAs, and schools learn from one another and improve their decision-making; and inform Federal policymaking.

A second major benefit is that better public information on State and local progress in the four reform areas will

likely spur more rapid progress on those reforms, because States and LEAs that appear to be lagging in one area or another may see a need to redouble their efforts. The Department believes that more rapid progress on the essential educational reforms will have major benefits nationally, and that these reforms have the potential to drive dramatic improvements in student outcomes. The requirements that apply to IHEs should, in particular, spur more rapid implementation of pre-K–16 State longitudinal data systems.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

This notice of proposed revisions contains information collection requirements previously approved under OMB control number 1810–0695, revisions to which are proposed herein. The Department has contemporaneously published a notice of interim final requirements that extends the deadline for reporting under the existing performance indicators (See RIN 1894–AA03). Under the PRA the Department has submitted both the information collection contained in the IFR and the revised information collection requirements contained in this notice to OMB for its review.

A Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final requirements, we will display the control number assigned by OMB to any information collection requirement proposed in this notice of proposed revisions and adopted in the final requirements.

Revisions to SFSF Indicator (c)(11) Requirements

Under the proposed Indicator (c)(11) alternative standard, a State would be required to publicly report, by December 31, 2012, information on the extent to which it has data-sharing agreements with private and out-of-State public IHEs that enable the State to track its recent high school graduates. We estimate that a State would need, on average, 40 hours to collect and report this information.

Based on information available from States on implementation of their SFSF plans, we estimate that 43 States will request use of the Indicator (c)(11) alternative standard. The total estimated hours for States to comply with the proposed Indicator (c)(11) alternative standard reporting requirements is accordingly an increase of 1,720 hours (40 hours per request times 43 requests) under collection 1810–0695.

Proposed Requirements for Requests for Extensions of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard, and Proposed Requirements for Revised Plans for Indicators (b)(1), (c)(11), and (c)(12)

Because States that did not meet the requirements associated with an SFSF indicator or descriptor were required to submit a plan for achieving compliance that includes progress tracking and providing regular public progress reports, we do not believe that any new effort would be needed in order for a State to determine whether to request an extension of the deadline for Indicator (b)(1), (c)(11), or (c)(12) or use of the Indicator (c)(11) alternative standard.

In requesting a deadline extension or use of the alternative standard, a State would be required to provide a description of its current capacity with respect to the applicable indicator and a signed assurance that it will comply with the revised requirements for the indicator and will submit its plan for doing so to the Department within 60 days of the request. The level of effort needed to meet these requirements would be minimal. We estimate that a State would need, on average, eight hours to complete such a request.

Based on information available from States on implementation of their SFSF plans, we estimate that 40 States will request an extension of the deadline for Indicator (b)(1), 43 States will request an extension of the deadline for Indicator (c)(11), 47 States will request an extension of the deadline for Indicator (c)(12), and 43 States will request use of the Indicator (c)(11) alternative standard. In total, States will complete an estimated 173 requests. The total estimated hours for States to comply with the proposed requirements for requests is an increase of 1,384 hours (eight hours per request times 173 requests) under collection 1810–0695.

A State requesting a deadline extension or the use of the Indicator (c)(11) alternative standard would then be required to submit to the Department, within 60 days, a revised plan with respect to the applicable indicator that includes the specific steps the State will take to meet the revised requirements for the indicator, the budget for developing and implementing the revised plan, and the responsible agency or agencies. We estimate that a State would need, on average, eight hours to complete a plan revision consistent with the requirements.

As discussed above, States will complete an estimated 173 total requests for deadline extensions or for use of the Indicator (c)(11) alternative standard. Accordingly, we estimate that States will complete, at most, 173 plan revisions.[6] At eight hours per revision, the total estimated burden to States for complying with the proposed plan revision requirements is an increase of 1,384 hours (eight hours per request times 173 requests) under collection 1810–0695.

The total estimated burden for complying with the proposed requirements for requests and for plan revisions is accordingly 2,768 hours.

After requesting an extension and providing a plan, a State would be required to collect and report the information associated with Indicators (b)(1), (c)(11), and (c)(12) by December 31, 2012. Based on information available from States on implementation of their SFSF plan, we estimate that 40 States will need to report and collect the information associated with Indicator (b)(1). At an estimated one hour per collection and report, the total estimated burden to States is an increase of 40 hours (one hour per State times 40 States) under collection 1810–0695. The average response time of one hour per collection is a one hour reduction from the estimates we provided in the November 2009 Notice because States

[6] A State requesting both an extension of the deadline for Indicator (c)(11) (as it applies to data on student enrollment in in-State public IHEs) and use of the alternative standard for that indicator (as it applies to data on student enrollment in private and out-of-State public IHEs) could address both of these requests in a single plan revision for the indicator. Consequently, the total number of completed plan revisions will likely be lower than this estimate.

have indicated that, on average, they have completed 50 percent of the work associated with reporting on this indicator.

As 9 States have already met the requirement for Indicator (c)(11), we expect that 43 States will need to collect and report the information associated with Indicator (c)(11), or provide evidence that they have developed the capacity to do so, for students who attend in-State, public IHEs. We estimate that, on average, a State would need 40 hours to meet this requirement. This is a reduction from the average hours per response that we estimated in the November 2009 Notice because the current estimate only relates to students who attend in-State, public IHEs rather than all students enrolled in an IHE. The remaining students will be covered under the (c)(11) alternative standard. The current estimate would equal a 1,720 hour (40 hours per State times 43 States) increase under collection 1810–0695.

The 13,409 LEAs located in those 43 States would need to provide information associated with Indicator (c)(11). Based on an estimate of the total number of students enrolled in public IHEs in their home State,[7] and based on the assumption that LEAs could provide this information at a rate of 20 students per hour, we estimate that these LEAs will require a total of 84,584 hours to comply with the requirements for Indicator (c)(11). Divided by the total number of affected LEAs, we estimate that each LEA would require 6.31 hours to provide this information. This would be a reduction from the average hours per response estimated in the November 2009 Notice because the current estimate only relates to students who attend in-State, public IHEs rather than all students attending an IHE. Information on the remaining students will be covered under the (c)(11) alternative standard.

Again, based on our estimate of the total number of students enrolled in public IHEs in their home State and the assumption that IHEs could provide this information at a rate of 20 students per hour, we estimate that, a total of 84,584 hours would be required for the 1,676 IHEs in the 43 affected States to respond to this requirement. On average, each IHE would need 50.47 hours to provide the information associated with Indicator (c)(11). This would be an increase in the average hours per response estimated in the November 2009 Notice because this estimate only relates to students who attend in-State public IHEs rather than all students attending an IHE. The remaining students will be covered under the (c)(11) alternative standard. The average burden per response increased from the burden estimated in the November 2009 Notice because the analysis now accounts for in-State public IHEs in the 43 States that have not yet met this requirement. Because 74 percent of freshmen attend in-State public IHEs, the burden under these proposed revisions is higher because it is no longer shared with private and out-of-State IHEs, which led to an estimate of a lower overall burden for all IHEs in the November 2009 Notice. We expect that 1,676 IHEs will need to provide this information.

The total estimated hours for complying with the requirements of Indicator (c)(11) is 170,888.

We estimate that the State burden for collecting and reporting the information associated with Indicator (c)(12), or providing evidence that the State has developed the capacity to do so, will be approximately 20 hours per State. This is a 20 hour reduction from the estimates in the November 2009 Notice because States have indicated that they have, on average, completed 50 percent of the work for this Indicator. Based on information provided by the States, we expect that 47 States will need to provide this information. Accordingly, the total burden to States is an increase of 940 hours (20 hours per State times 47 States) under collection 1810–0695.

The 1,555 IHEs located in these States would be required to report information on the number of students who have completed at least one year's worth of college credit within two years of enrollment in the IHE. Based on data from the Digest of Education Statistics, we estimate that 1,140,855 first-time freshmen are enrolled in degree-granting in-State public IHEs in the 47 States that have not yet met this requirement. We estimate that IHEs could provide this information at a rate of 20 students per hour, which leads to approximately 57,043 hours of total effort across the affected IHEs. By dividing the total number of hours by the 1,555 public IHEs in the 47 States, we estimate that, on average, an IHE would need 36.68 hours to collect and report the information associated with Indicator (c)(12). The average hours per response is less than the estimate in the November 2009 Notice because some States with higher than average percentages of in-State students have already completed this work. Excluding the IHEs from these States from the calculations led to a reduced average response time.

The total estimated burden hours for complying with the collection and reporting requirements for Indicator (c)(12) is 57,983.

The estimated burden hours for complying with the collection and reporting requirements associated with the proposed Indicator (c)(11) alternative standard is discussed above.

The total estimated burden hours for complying with the proposed collection and reporting requirements associated with Indicators (b)(1), (c)(11) and (c)(12) is accordingly 228,911 hours.

The total estimated burden for complying with the proposed requirements in this notice is an increase of 233,399 hours under collection 1810–0695.

[7] According to the Digest of Education Statistics, 2009, 2,240,414 first-time freshmen enrolled in public, degree-granting IHEs in fall 2008, which represented 74 percent of all first-time freshmen. See *http://nces.ed.gov/programs/digest/d09/tables/dt09_199.asp.* Also in fall 2008, 2,109,931 freshmen who graduated from high school within the last 12 months attended degree-granting IHEs in their home State, which represented 81 percent of all freshmen. See *http://nces.ed.gov/programs/digest/d09/tables/dt09_223.asp.* 1. An estimate of the number of first-time freshmen enrolled in public, degree-granting IHEs in their home State can be derived two ways. Applying the percentage of first-time freshmen attending public degree-granting IHEs to the number of first-time freshmen attending an IHE in their home State yields an estimate of 1,508,484, and applying the percentage of first-time freshmen attending an IHE in their home State to the number of first-time freshmen attending public degree-granting IHEs yields an estimate of 2,169,077. For the purposes of this estimate, the Department chooses the midpoint of these figures, which is 1,838,780. Applying the estimate (described earlier) that 94 percent of all first-time postsecondary students graduated from public schools, the Department estimates that 1,691,678 public high school graduates enroll in public degree-granting IHEs in their home State.

COLLECTION OF INFORMATION

Information collection	OMB Control No. and estimated change in burden
This notice of proposed revisions proposes an extension for collecting and reporting information associated with Indicators (b)(1), (c)(11), and (c)(12); an alternative standard for Indicator (c)(11); proposes requirements for requests for extensions of deadlines for Indicators (b)(1), (c)(11), and (c)(12); and proposes requirements for revised plans for Indicators (b)(1), (c)(11), and (c)(12).	OMB 1810–0695. The burden would increase by 233,399 hours.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared an Information Collection Request (ICR) for this collection. In preparing your comments you may want to review the ICR, which we maintain in the Education Department Information Collection System (EDICS) at *http://edicsweb.ed.gov.* Click on Browse Pending Collections. This proposed collection is identified as proposed collection 1810–0695.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on the proposed collection within 30 days after publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Department invites comment on whether these requirements require transmission of information that any other agency or authority of the United States gathers or makes available.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.394 (Education Stabilization Fund) and 84.397 (Government Services Fund).

Dated: September 19, 2011.

Arne Duncan,

Secretary of Education.

[FR Doc. 2011–24563 Filed 9–22–11; 8:45 am]

BILLING CODE 4000–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Docket No. RM2011–13; Order No. 823]

Appeals of Post Office Closings

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking—supplement.

SUMMARY: This document supplements a recently-issued proposed rulemaking on appeals of post office closings by eliminating a publication requirement and by making several minor conforming changes. Including these changes as part of the more comprehensive rulemaking promotes efficiency by allowing interested persons to address proposed changes in one filing. These changes affect only the Commission's general rules of practice and procedure. They do not affect any of the provisions in proposed new part 3025. Persons who need additional time to comment on the changes in this supplemental proposed rule may request additional time.

DATES: *Comments are due:* October 3, 2011.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https:www.prc.gov/prc-pages/filingonline/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6920 (for proposal-related information) or *DocketAdmins@prc.gov* (for electronic filing assistance).

SUPPLEMENTARY INFORMATION: Regulatory history: 76 FR 54179 (August 31, 2011).

On August 18, 2011, the Commission issued Order No. 814 proposing to amend rules governing appeals of Postal Service final determinations to close or consolidate post offices.[1] One of the purposes of the proposed rules is to streamline the appeals process. Upon further consideration, the Commission believes that further streamlining is possible by eliminating the current requirement that notice of each appeal filed with the Commission be published in the **Federal Register**. Publication of such notice in the **Federal Register** is not required by statute or the Constitution. Accordingly, the Commission proposes to amend 39 CFR 3001.17.[2] Comments on the amendment to rule 17 are due October 3, 2011 (the same date comments are due pursuant to Order No. 814).

Appeals of Postal Service determinations to close or consolidate a post office are limited to persons served by that post office. 39 U.S.C. 404(d)(5). Postal Service determinations to close or consolidate a post office must be in writing and must be made available to persons served by such office. 39 U.S.C. 404(d)(3). Such determinations should apprise affected persons of their right to appeal the decision to the Commission within 30 days of its being made available to such persons.

Under its current rules, upon receipt of an appeal the Commission's practice has been to notify the Postal Service of the filing and to issue an order docketing the appeal, appointing a Public Representative, and establishing a procedural schedule governing submission of the underlying record and briefs in the proceeding. Pursuant to 39 CFR 3001.17(c), the Commission also directed that its order be published in the **Federal Register**. The Commission has determined that publication of its order in the **Federal Register** is unnecessary. It, therefore, proposes to eliminate that requirement.

Under the Administrative Procedure Act, Public Law 79–404, 60 Stat. 237, 1946 (APA), " 'adjudication' means agency process for formulation of an order." 5 U.S.C. 551(7). Appeals initiated under section 404(d) are not formal adjudications under the APA (5 U.S.C. 554) because, pursuant to section 404(d)(5)(C), the provisions of 5 U.S.C. 556 and 557 do not apply to post office appeal proceedings.

Instead, appeals of post office closings are a form of informal adjudication.[3] The Commission is not required by section 404(d) or any other statutory provision to publish in the **Federal Register** notice that a post office appeal has been filed with it. As with all its orders, the Commission does publish orders issued in post office appeal proceedings on its Web site and, if needed, mails a copy of it to parties without access to the Commission's Web site. Moreover, both the Commission's and the Postal Service's rules require that documents relating to an appeal be displayed at a post office to be closed.[4] Such postings also serve to apprise persons served by such post office that an appeal has been initiated.

Accordingly, the Commission proposes to amend rule 3001.17 to eliminate the requirement that notice of each post office appeal be published in the **Federal Register**. In addition, the Commission proposes several housekeeping changes to that rule to delete outdated provisions:

- Remove subparagraphs (a)(1) and (2) and redesignate subparagraphs (a)(3), (4), and (5) as (a)(1), (2), and (3), respectively;
- Revise redesignated subparagraph (a)(2) by changing "subpart E of this part" to "part 3030 of this chapter";
- Revise redesignated subparagraph (a)(3) by changing "to institute any other proceeding under the Act." to "it is appropriate.";
- Remove paragraph (b) and redesignate paragraphs (c) and (d) as (b) and (c), respectively;
- Revise redesignated paragraph (b) by inserting "and" after "on the Postal Service," and by striking ", and the appellant in the appeal of a Postal Service determination to close or consolidate a post office";
- Revise redesignated subparagraph (c)(1) by changing "paragraphs (a) and (b)" to "paragraph (a)"; and
- Revise redesignated subparagraph (c)(3) by inserting "and" after "nature of postal services;", and by striking "or, in the case of an appeal, an identification of the appellant and a summarization of the Postal Service determination to close or consolidate under review".

Lastly, in Order No. 814, the Commission proposed to allow participants in appeal proceedings (other than the Postal Service) to file hard copy documents thereby eliminating the need for participants to request a waiver of the Commission's online filing requirements. *See* Order No. 814 at 2, 13. This change is reflected in proposed revisions to rules 3001.9(a) and 10(d). To conform to the proposed changes and to eliminate an outdated reference, the Commission proposes the following change to rule 3001.10(b):

- Revise redesignated paragraph (b) by removing "Participants in proceedings conducted under subpart H who are unable to comply with these requirements may seek to have them waived."

It is ordered:

1. Comments on the amendments to 39 CFR 3001.17 and 3001.10(b) specified in the body of this Order are due October 3, 2011.

2. The Secretary shall arrange for publication of this document in the **Federal Register**.

List of Subjects in Part 3001

Administrative practice and procedure; Freedom of information; Postal service; Sunshine Act.

Ruth Ann Abrams,

Acting Secretary.

For the reasons discussed in the preamble, the Postal Regulatory Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows.

PART 3001—[AMENDED]

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

Subpart A—Rules of General Applicability

2. In § 3001.10, revise paragraph (b) to read as follows:

§ 3001.10 Form and number of copies of documents.

* * * * *

(b) *Hard copies.* Each document filed in paper form must be produced on letter-size paper, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than .75 inches, except that tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service must be printed from a text-based pdf version of the

[1] Notice of Proposed Rulemaking Appeals of Postal Service Determinations to Close or Consolidate Post Offices, August 18, 2011 (Order No. 814).

[2] As noted below, the Commission also proposes several conforming changes to rule 300.17 to remove outdated provisions and one change to rule 3001.10(b).

[3] "Informal adjudications are not covered by the APA at all, generally do not involve a hearing, and are subject to the specific enabling statute of each agency." James T. O'Reilly, Administrative Rulemaking: Structuring, Opposing, and Defending Federal Agency Regulations 621 (2d ed. 2011).

[4] *See* 39 CFR 241.3(g)(3)(ii) and 3001.117.

document, where possible. Otherwise, they may be reproduced by any duplicating process that produces clear and legible copies. Each person filing a hardcopy document with the Commission mut prove an original and two fully conformed copies of the document required or permitted to be filed under this part, except for a document filed under seal, for which only the original and two (2) copies need be filed. The copies need not be signed but shall show the full name of the individual signing the original document and the certificate of service attached thereto.

* * * * *

2. Revise § 3001.17 to read as follows:

§ 3001.17 Notice of proceeding.

(a) *When issued.* The Commission shall issue a notice of proceeding to be determined on the record with an opportunity for any interested person to request a hearing whenever:

(1) The Postal Service files a request with the Commission to issue an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis;

(2) The Commission in the exercise of its discretion determines that an opportunity for hearing should be provided with regard to a complaint filed pursuant to part 3030 of this chapter; or

(3) The Commission in the exercise of its discretion determines it is appropriate.

(b) *Service of notice.* Each notice of proceeding shall be served on the Postal Service and the complainant in a complaint proceeding.

(c) *Contents of notice.* The notice of proceeding shall include the following:

(1) The general nature of the proceeding involved in terms of categories listed in paragraph (a) of this section;

(2) A reference to the legal authority under which the proceeding is to be conducted;

(3) A concise description of proposals for changes in rates or fees; proposals for changes in the nature of postal services; and in the case of a complaint, an identification of the complainant and a concise description of the subject matter of the complaint;

(4) The date by which notices of intervention and requests for hearing must be filed; and

(5) Such other information as the Commission may desire to include.

[FR Doc. 2011–24311 Filed 9–22–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0721; FRL–9470–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Adhesives and Sealants Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revision submitted by the State of Delaware. The SIP revision adds section 4.0, under Regulation 1141, relating to the control of emissions of volatile organic compounds (VOC) from the manufacture, sale, use, or application of adhesives, sealants, primers, and solvents. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 24, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0721 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0721, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA–R03–OAR–2011–0721. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 9, 2009, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to the Delaware SIP. The SIP revision consists of Delaware's regulation for reducing VOCs from commercially-used adhesive and sealant products by adding section 4.0—Adhesives and Sealants under Regulation 1141—Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products. The revisions are part of Delaware's strategy to achieve and maintain the 8-hour ozone national ambient air quality standard (NAAQS) throughout the State.

III. Summary of SIP Revision

The SIP revision consists of the following amendments:

New Regulation—Regulation 1141 Section 4.0—Adhesives and Sealants

Section 4.0 is a new regulation based on the Ozone Transport Commission (OTC) model rule that in turn was based on the California Air Resources Board (CARB) model rule. Section 4.0 addresses adhesive, sealants, adhesive primers, and sealant primers that are sold in larger containers and used primarily in commercial and industrial applications, which include residential applications of these products, such as carpet, flooring, and roofing installations.

The OTC states developed a model rule ''OTC Model Rule For Adhesives and Sealants'' dated 2006 which was based on the 1998 CARB reasonably available control technology (RACT) determination. This RACT determination applied to both the manufacture and use of adhesives, sealants, adhesive primers, or sealant primers, in both industrial and manufacturing facilities and in the field. California Air Districts used this determination to develop regulations for this category. EPA addressed this source category with a Control Techniques Guideline (CTG) document for Miscellaneous Industrial Adhesives, dated September 2008. This CTG was developed in response to section 183(e) of the CAA requirement for EPA to study and regulate consumer and commercial products, which is included in EPA's Report to Congress, ''Study of Volatile Organic Compound Emissions from Consumer and Commercial Products—Comprehensive Emissions Inventory.'' The miscellaneous industrial adhesives category was limited to adhesives and adhesive primers used in industrial and manufacturing operations and did not include products applied in the field. Therefore, the OTC model rule and state efforts in developing individual regulations preceded EPA's CTG for this source category and were broader in applicability.

The new section 4.0 adds regulations that: (a) Set standards for the application of adhesives, sealants, adhesive primers, and sealant primers by providing options for appliers either to use a product with a VOC content equal to or less than a specified limit or to use add-on controls; (b) add definitions and terms for new product categories; (c) establish that any person may not use or apply at the facility an adhesive, sealant, adhesive primer or sealant primer that exceeds the VOC content limits; (d) specify requirements for person of a facility that uses or applies a surface preparation solvent or cleanup solvent or removes an adhesive, sealant, adhesive primer, and sealant primer from the parts of spray application equipment; (e) provide for an alternative add-on control system requirement of at least 85 percent overall control efficiency (capture and destruction), by weight; (f) specify requirements for proper storage and disposal, work practices, surface preparation, and cleanup solvent composition; and (g) specify exemptions, as well as registration and product labeling requirements, recordkeeping requirements, and test methods and compliance procedures.

A detailed summary of EPA's review of and rationale for proposing to approve this SIP revision may be found in the Technical Support Document (TSD) for this action which is available on-line at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2011–0721.

III. Proposed Action

EPA is proposing to approve the Delaware SIP revision adding section 4.0—Adhesives and Sealants to Regulation 1141—Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Delaware's control of VOCs from adhesives and sealants, does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2011.

James W. Newsom,

Acting, Regional Administrator, Region III.

[FR Doc. 2011–24518 Filed 9–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0603; FRL–9470–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to the Control of Volatile Organic Compound Emissions From Offset Lithographic Printing and Letterpress Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This SIP revision amends the control of volatile organic compound (VOC) emissions from offset lithographic printing and letterpress printing. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 24, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0603 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0603, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0603. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 25, 2011, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a SIP revision that amends the control of VOC emissions from offset lithographic printing and letterpress printing (7 DE Admin Code 1124, Section 47.0). The purpose of this SIP revision is to conform to the new Control Techniques Guidelines (CTG) issued by EPA.

I. Background

Section 182(b)(2) of the CAA requires all ozone nonattainment areas, including Delaware, to update relevant regulations for reasonably available control technology (RACT) controls for emission sources covered by EPA's CTG and to submit the regulations to EPA as SIP revisions. Section 47.0 (Offset Lithographic Printing) under 7 DE Admin Code 1124 (Control of VOC Emissions) was originally developed in 1994 after EPA issued a CTG in 1993 for the control of VOC emissions from the offset lithographic printing industry. (See docket EPA–HQ–OAR–2006–0536 for the 1993 CTG and 62 FR 26399, May 14, 1997 for 7 DE Admin Code 1124, Section 47.0). In September 2006 (EPA–453/R–06–002), EPA updated its CTG for the offset lithographic printing industry by adding control requirements for letterpress printing operations. DNREC revised Section 47.0 (Offset Lithographic Printing and Letterpress Printing) in early 2010 to reflect the new requirements in EPA's 2006 CTG.

II. Summary of SIP Revision

DNREC's SIP revision to Section 47.0 that was submitted on May 25, 2011, expands the control of VOC emissions to include letterpress printing presses and set up a new and more stringent 95 percent reduction standard for those control systems installed after April 11, 2011 (effective date of the SIP revision). Amendments to Section 47.0 also include specifying a one-year transition period for facilities to comply with the new requirements and providing flexibility for facilities to locate unspecified temperature monitoring devices for control systems. A detailed summary of EPA's review and rationale for proposing to approve this SIP revision may be found in the Technical Support Document (TSD) for this action which is available on line at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2011–0603.

III. Proposed Action

EPA is proposing to approve the Delaware SIP revision for the control of VOC emissions from offset lithographic printing and letterpress printing (7 DE Admin Code 1124, Section 47.0) submitted on May 25, 2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Delaware's offset lithographic printing and letterpress printing, does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2011.

James W. Newsom,

Acting, Regional Administrator, Region III.

[FR Doc. 2011–24521 Filed 9–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0767, FRL–9470–6]

Approval and Promulgation of Implementation Plans; Oregon: New Source Review/Prevention of Significant Deterioration Rule Revisions and Air Quality Permit Streamlining Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a portion of the State Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of addressing the third element of the interstate transport provisions of Clean Air Act (CAA or the Act) section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS. The third element of CAA section 110(a)(2)(D)(i)(II) requires that a State not interfere with any other State's required measures to prevent significant deterioration (PSD) of its air quality.

EPA is also proposing to approve numerous revisions to the Oregon SIP that were submitted to EPA by the State of Oregon on October 8, 2008; October 10, 2008; March 17, 2009; June 23, 2010; December 22, 2010 and May 5, 2011. The revisions include updating Oregon's new source review (NSR) rules to be consistent with current Federal regulations and streamlining Oregon's air quality rules by clarifying requirements, removing duplicative rules, and correcting errors. The revisions were submitted in accordance with the requirements of section 110 and part D of the Act).

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2011–0767, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: R10-Public_Comments@epa.gov.*
- *Mail:* Scott Hedges, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Scott Hedges, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2011–0767. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA

Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Scott Hedges at telephone number: (206) 553–0296, e-mail address: *hedges.scott@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA. Information is organized as follows:

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I. Purpose of Proposed Action

EPA proposes to approve a portion of Oregon's Interstate Transport SIP revision for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS submitted by the Oregon Department of Quality (ODEQ) on June 23, 2010, and December 22, 2010.[1] Specifically, we are proposing to approve the portion of the plan that addresses the third element of section 110(a)(2)(D)(i), interference with any other State's required measures to PSD of its air quality with respect to these NAAQS. On June 9, 2011, EPA approved elements one and two of CAA section 110(a)(2)(D)(i): (1) Significant contribution to nonattainment of these NAAQS in any other State, and (2) interference with maintenance of these NAAQS by any other State (76 FR 33650). In addition, on July 5, 2011, EPA approved the SIP for the fourth element of CAA section 110(a)(2)(D)(i) found the SIP to be adequate for element four: interference with any other State's required measures to protect visibility (76 FR 38997).

EPA is also proposing to approve multiple revisions to Oregon's SIP that were submitted to EPA by ODEQ on October 8, 2008, October 10, 2008, March 17, 2009, June 23, 2010, December 22, 2010, and May 5, 2011. The revisions update Oregon's NSR rules to be consistent with Federal requirements by regulating $PM_{2.5}$ and precursor pollutants, as well as adding greenhouse gases (GHGs) to the list of pollutants whose emissions are subject to control under the State's NSR permitting process and establishes a threshold for such regulation. Approval of the State's GHG permitting regulations is proposed to be accompanied by a simultaneous withdrawal of the Federal Implementation Plan (FIP) that EPA promulgated on December 9, 2010 (75 FR 82246). EPA also proposes to approve changes to Oregon's Plant Site Emissions Limit (PSEL) program which address the method for establishing baseline emissions and adopt a threshold or significant emission rate of 10 tons per year of $PM_{2.5}$ as a significant change at an existing facility. Other SIP rule changes that are proposed for approval in this action streamline and clarify the State's air quality rules that are unrelated to NSR and remove duplicative or outdated requirements (such as the removal of unused basic permit categories that are covered under the general permitting provisions of the Oregon Administrative Rules (OAR). The SIP submittals, described in greater detail in this Notice, revise and amend OAR, chapter 340, divisions 200, 202, 204, 206, 209, 210, 214, 216, 222, 224, 225, 228, 234, and 236, currently in the Federally approved Oregon SIP (CFR part 52, subpart MM), and add portions of OAR chapter 340, division 208 to the Federal approved Oregon SIP. The proposed SIP revisions are explained in more detail below along with our evaluation of how these rules comply with the requirements for SIPs and the basis for our proposed action.

II. Oregon SIP Revisions

Table 1 provides a list of each SIP submittals by ODEQ (by submittal date, and subject) evaluated in this proposed action. The paragraphs that follow Table 1 include further information for each SIP submittal including a summary of the submittal with relevant background information and analysis to support our action.

TABLE 1—ODEQ SIP SUBMITTALS ADDRESSED IN THIS ACTION[2]

Date of submittal	Subject
10/08/2008	Statutory Agricultural Operations Exemption.
10/10/2008	Permit Streamlining Rules. (*Repealed Rules in Italics*).
03/17/2009	Plant Site Emission Limit (PSEL) Rule.
06/23/2010 (Report on interstate transport of $PM_{2.5}$ and ozone added to submittal on 12/22/2010).	Infrastructure SIP Rule Changes.
05/05/2011	NSR, $PM_{2.5}$, and GHG Permitting Rule Updates.

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for States to submit SIPs to attain and/or maintain the NAAQS and EPA's actions regarding approval of those SIPs. With this action we are proposing approval of the third element of Oregon's Interstate Transport SIP revision for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS related to PSD.

EPA last approved the Oregon major NSR rules (which encompass PSD and part D NSR) on December 17, 2002 (published January 22, 2003, 68 FR 2891). That approval acted on a July 1, 2001, comprehensive version of Oregon's NSR rules submitted to EPA on June 26, 2001, prior to the 2002 NSR Reform Rules (published on December 31, 2002, effective date March 3, 2003). Since the approval of the State's July 2001 rules, ODEQ has submitted several NSR/PSD rule revisions for

[1] *See* transmittal letters dated June 23, 2010, from Joni Hammond, Deputy Director, ODEQ, and December 22, 2010, from Dick Pedersen, Director, ODEQ, to Dennis McLerran, Regional Administrator, EPA Region 10.

[2] EPA is not proposing to take action on each of the regulatory provisions that were included in the five SIP submissions identified in Table 1. Only the SIP revisions and implementing regulations specifically identified in Table 2 are being proposed for action in today's notice.

incorporation into the Federally approved SIP including, most recently, the changes needed for the permitting of $PM_{2.5}$ and GHGs under ODEQ's major NSR program. The regulations which are proposed for approval in this action accordingly include PSD permitting of $PM_{2.5}$ and GHGs and nonattainment NSR permitting of $PM_{2.5}$.

Finally, EPA is also proposing to approve multiple SIP submittals containing ODEQ rule revisions that effectuate structural reorganizations of the Oregon code. These rules have been clarified and streamlined with duplicative and outdated requirements removed. Further background for each one is provided in the section below.

A. Third PSD Element of Oregon's Interstate Transport SIP for the 1997 Ozone and 1997 and 2006 $PM_{2.5}$ NAAQS

On July 18, 1997, EPA promulgated the 1997 8-hour ozone [3] NAAQS and the 1997 $PM_{2.5}$ NAAQS.[4] Additionally on December 18, 2006, EPA revised the 1997 24-hour $PM_{2.5}$ standard.[5] Today's proposed actions relate to these revised standards (the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS).

Section 110(a)(1) of the CAA requires States to submit SIPs to address a new or revised NAAQS within three years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. On August 15, 2006, and September 25, 2009, respectively, EPA issued guidance for States making submissions to meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ standards (2006 Guidance) [6] and for the 2006 $PM_{2.5}$ standards (2009 Guidance).[7]

The interstate transport SIP provisions in section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each State to submit a SIP that contains provisions that prohibit emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this rulemaking EPA is addressing the third element in this subsection. The third element of section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other State's required measures to prevent significant deterioration of its air quality.

As a part of its SIP submittal addressing interstate transport, ODEQ submitted an analysis entitled ''Oregon SIP Infrastructure for Addressing the Interstate Transport of Ozone and Fine Particulate Matter'', dated November 5, 2009, to EPA on December 22, 2010.[8] EPA believes that ODEQ's submission is consistent with EPA's recommendations in both the 2006 and 2009 Guidance, when evaluated in conjunction with the NSR/PSD rule revisions that EPA proposes to approve in today's action. EPA's proposed approval of Oregon's SIP submission for purposes of meeting the requirements of section 110(a)(2)(D)(i) is contingent upon the final approval of the NSR/PSD rule revisions also included in this proposed action. (In addition to this section, see sections II. C through E of this action for a discussion of the rule revisions proposed for approval.)

EPA proposes to find that the Oregon SIP (40 CFR part 52 subpart MM), as amended by today's proposed action, includes the requirements under the CAA necessary to avoid interference with another State's SIP measures for preventing significant deterioration of air quality.

Oregon has no EPA designated 8-hour ozone nonattainment areas, and has two designated 24-hour $PM_{2.5}$ nonattainment areas (Klamath Falls and Oakridge). For most of the State, ODEQ permits new major industrial sources through the PSD program for these pollutants. ODEQ's major NSR rules (division 224—which includes both nonattainment NSR and PSD rule provisions), as reflected in the rules proposed for incorporation into the SIP in today's action, ensure that the programs for PSD in other States are not jeopardized by new or expanding industrial sources. Specifically, all new industrial sources and major modifications to existing industrial sources in attainment areas are subject to ODEQ PSD rules requiring pre-construction review, air quality analysis, the application of any required emission control technology, and air permitting. All new sources and major modifications in nonattainment areas are subject to the nonattainment New Source Review provisions of these rules, including LAER, offsets, and net air quality benefit. ODEQ's PSD program directly regulates $PM_{2.5}$ meeting the requirements of NSR/PSD and also includes procedures to address Phase-II requirements of the final rule to implement the 8–Hour Ozone NAAQS.

EPA believes that Oregon's regulatory and SIP revision for the 1997 8-hour ozone NAAQS that makes NO_X a precursor for ozone for PSD purposes and the PSD revision for the 1997 and 2006 $PM_{2.5}$ NAAQS that makes SO_2 and NO_X precursors for $PM_{2.5}$ for PSD purposes, taken together with the other revised PSD rule revisions that EPA proposes to approve in this action, satisfy the requirements of the third element of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. That is, these provisions ensure that there will be no interference with any other State's required PSD measures because Oregon's SIP, as proposed for approval in this action, will meet current CAA requirements for PSD.

B. How Oregon's NSR/PSD Permitting Program Meets Federal Requirements

Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515, set forth preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA, known as ''major New Source Review'' or ''major NSR.'' The major NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. States adopt

[3] *See* 62 FR 38856. The level of the 1997 8-hour ozone NAAQS is 0.08 parts per million (ppm). 40 CFR 50.10. The 8-hour ozone standard is met when the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentrations is 0.08 ppm or less (*i.e.,* less than 0.085 ppm based on the rounding convention in 40 CFR part 50, appendix I). This 3-year average is referred to as the ''design value.''

[4] *See* 62 FR 38652. The level of the 1997 $PM_{2.5}$ NAAQS are 15.0 μg/m³ (annual arithmetic mean concentration) and 65 μg/m³ (24-hour average concentration). 40 CFR 50.7. The annual standard is met when the 3-year average of the annual mean concentrations is 15.0 μg/m³ or less (*i.e.,* less than 15.05 μg/m³ based on the rounding convention in 40 CFR part 50, appendix N section 4.3). The 24-hour standard is met when the 3-year average annual 98th percentile of 24-hour concentrations is 65 μg/m³ or less (*i.e.,* less than 65.5 μg/m³ based on the rounding convention in 40 CFR part 40 appendix N section 4.3). *Id.* These 3-year averages are referred to as the annual $PM_{2.5}$ and 24-hour $PM_{2.5}$ ''design values,'' respectively.

[5] *See* 71 FR 61144. In 2006, the 24-hour $PM_{2.5}$ NAAQS standard was changed from 65 μg/m³ to 35 μg/m³ (24-hour average concentration). The annual $PM_{2.5}$ standard was not changed. 40 CFR 50.13.

[6] Memorandum from William T. Harnett entitled ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' August 15, 2006.

[7] Memorandum from William T. Harnett entitled ''Guidance SIP Elements Required Under Sections 110(a)(1) and (2) for the 24-hour Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' September 25, 2009.

[8] This interstate transport report was inadvertently left out of the original June 23, 2010, SIP submittal.

major NSR programs as part of their SIP. Part C is the ''Prevention of Significant Deterioration'' or ''PSD'' program, which applies in areas that meet the NAAQS (*i.e.,* ''attainment'' areas) as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS (*i.e.,* ''unclassifiable'' areas). Part D is the ''Nonattainment New Source Review'' or the ''NNSR'' program, which applies in areas that are not in attainment of the NAAQS (*i.e.,* ''nonattainment areas''). EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

On December 31, 2002, EPA published final rule changes to the PSD and NNSR programs (67 FR 80186) and on November 7, 2003, EPA published a notice of final action on the reconsideration of the December 31, 2002 final rule changes (68 FR 63021). In the November 7, 2003 final action, EPA added a definition of ''replacement unit,'' and clarified an issue regarding plantwide applicability limitations (PALs). The December 31, 2002 and the November 7, 2003, final actions, are collectively referred to as the ''2002 NSR Reform Rules.''

The 2002 NSR Reform Rules made changes to five areas of the major NSR programs related to physical and operational changes at existing major stationary sources. In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with PALs to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.''

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), various petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR rules (45 FR 5276, August 7, 1980). On June 24, 2005, the DC Circuit Court issued a decision on the challenges to the 2002 NSR Reform Rules. *See New York* v. *United States,* 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the 2002 NSR Reform Rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping (40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6)), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from Federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the DC Circuit Court.

The 2002 NSR Reform Rules require that State agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. To meet this requirement, ODEQ submitted an NSR reform equivalency demonstration report on December 22, 2005.

1. Oregon's NSR/PSD Rule Revisions

EPA last approved the Oregon major NSR rules addressing part D NSR and PSD on December 17, 2002 (published January 22, 2003, 68 FR 2891). This approval acted on a July 1, 2001, comprehensive version of Oregon's NSR rules submitted to EPA on June 26, 2001.

On May 5, 2011, ODEQ submitted a series of rule changes as revisions to the Oregon SIP. These rule changes are necessary to align its rules with significant changes made to EPA's air quality permitting regulations, including the 2002 NSR Reform Rules (published on December 31, 2002, effective date March 3, 2003), and the permitting of $PM_{2.5}$ and GHG emissions. The SIP submittal covers revisions to OAR chapter 340, divisions 200, 202, 216, 224, 225, and 228.

The rule revisions include the adoption of a threshold or significant emission rate of 10 tons per year of $PM_{2.5}$ as a significant change at an existing facility. Facilities would trigger NSR/PSD permitting only if a physical or operational change increased emissions above this threshold. The rule revisions also include the adoption of levels to determine if additional ambient air quality analysis is required, track the cumulative impact of emissions growth in areas that meet air quality standards, and determine if preconstruction monitoring is required for $PM_{2.5}$.

The May 5, 2011, SIP submittal also includes rules to allow the permitting of GHG emissions under Oregon's NSR/PSD program. Oregon's definition of ''federal major source'' is almost identical to EPA's definition of ''major stationary source'' and as such, Oregon has tailored its PSD rules in a manner identical to EPA's with respect to major sources of GHG emissions. That is, for a ''federal major source'' to be ''major'' for GHGs under the Oregon PSD program, it must have the potential to emit GHGs equal to or greater than 100,000 tons per year on a carbon dioxide equivalent (CO2e) basis and a potential to emit GHGs equal to or greater than 100/250 tons per year on a mass basis.[9] However, as discussed above, Oregon's definition of ''major modification'' is substantially different than (but equivalent to) EPA's definition of ''major modification'' so Oregon has tailored its PSD rule in a different manner in order to produce the same outcome with respect to major modifications for GHGs as EPA's Tailoring Rule.

In order for Oregon's PSEL-based definition to have the same effect as EPA's definition of ''major modification'' with respect to GHG emissions (*i.e.,* an increase greater than 75,000 tons per year on a CO2e basis and an increase greater than ''zero'' on a mass basis), Oregon's rule requires the establishment of PSELs on a CO2e basis and an increase in the PSEL of more than 75,000 tons per year on a CO2e basis, before a ''major modification'' under the Oregon rules will have occurred.[10] This approach is consistent with how the Oregon program defines major modifications for all other NSR regulated pollutants and results in the same outcome as EPA's Tailoring Rule with respect to major modifications for GHG emissions.

EPA proposes to find that these provisions are consistent with EPA's GHG Tailoring Rule and is proposing to approve this GHG PSD permitting revision into the Oregon SIP providing Oregon with the authority to issue PSD permits addressing GHG emissions. In addition, EPA will rescind the FIP codified in 40 CFR 52.1987(d) that ensures the availability of a PSD-permitting authority for GHG-emitting sources in Oregon once this proposed action has been approved into the Oregon SIP.

Additionally the May 5, 2011, SIP submittal includes rule changes providing small-scale local energy

[9] Carbon dioxide equivalent or CO2e is a unit of measurement that allows the effect of different GHGs to be compared using carbon dioxide as a standard unit for reference.

[10] Oregon's rules use the terms ''significant emission threshold'' or ''significant emission rate (SER)'' for GHG PSD permitting purposes. However, these terms do not have the same meaning as ''significant'' as used in the context of EPA's PSD regulation at 40 CFR 51.166. EPA has not established a significant emission rate for GHGs under 40 CFR 51.166(b)(23)(i). Oregon's PSEL PSD permitting program establishes a GHG threshold of 75,000 CO2e to tailor the application of its PSD permitting program in a manner similar to EPA's GHG Tailoring Rule.

projects more flexibility in obtaining reductions to offset proposed emission increases.

EPA has reviewed these amendments to the ODEQ rules and, as discussed below, has determined that they meet EPA's requirements under sections 110, part C and part D of title I of the CAA. EPA is therefore proposing to approve them as revisions to the Oregon SIP.

2. Analysis of Oregon's NSR/PSD Revisions

In 1982, EPA approved Oregon's Major NSR/PSD program as equivalent to, or more stringent than, EPA's NSR/PSD regulations (47 FR 35191, August 13, 1982). Oregon's program includes a Major NSR rule that covers non-attainment NSR and PSD applicability provisions as well as a separate but related PSEL (plant-wide cap) rule. The PSEL rule employs a similar, though not identical, approach to EPA's PAL program and was in fact identified as an example of a State program successfully using a PAL concept during EPA's development of its PAL regulations.

In the December 31, 2002, preamble to its 2002 NSR Reform Rules, EPA discussed potential state PAL regulatory programs that could differ from the Federal rules while still affording equivalent effectiveness as an NSR/PSD program. The 2002 NSR Reform rules did not include specific requirements for an area-wide PAL program. However, the Agency did provide that ''[i]f a State currently has or wants to pursue an area-wide PAL program, then it must demonstrate that its program is equivalent to or more stringent than our final [PAL] rules.'' [11] Later on, EPA affirmed that ''[e]ver since our current NSR regulations were adopted in 1980, we have taken the position that States may meet the requirements of part 51 'with different but equivalent regulations.' 45 FR 52676. Several states have, indeed, implemented programs that work every bit as well as our own base programs, yet depart substantially from the basic framework established in our rules. A good example is Oregon, where the SIP-approved program requires all major sources to obtain plantwide permits not unlike the PALs that we are finalizing today * * *'' [12]

Oregon's NSR/PSD program differs from the Federal program in several ways. It doesn't subject the same sources and modifications to major NSR as would EPA's rules. The program has lower major source thresholds for sources in nonattainment areas and maintenance areas, so smaller new sources and changes to smaller existing sources are subject to review. The program also requires fugitive emissions to be included in the applicability determination for all new sources and modifications to existing sources. However, as mentioned, the program also utilizes a PSEL approach to defining major modifications rather than a contemporaneous net emissions increase approach as does EPA's main (non PAL alternative) NSR reform approach.

The effect of Oregon's PSEL approach is that, generally, changes which would be subject to review under the PAL provisions in the 2002 NSR Reform Rules are subject under Oregon's rules. However, there are some differences between the Oregon rules and EPA's rules that, generally, result in Oregon's program being more protective. For example, when a major modification is permitted, BACT and/or LAER is required for more new and modified emission units than under EPA's PAL rules. Oregon's rules require BACT/LAER for all new and modified units, not just significant and major units, as well as defining what constitutes a modified unit more broadly than EPA's rules. In addition, changes which would result in increased emissions, but would not be considered modifications under either the Oregon rules or EPA's reform rules are still reviewed for compliance with ambient standards and PSD increments under Oregon's PSEL program.

Overall, EPA has determined that Oregon's PSD program for reviewing and controlling emissions from new and modified sources is at least as strict as EPA's program. We have reviewed Oregon's NSR/PSD program and ODEQ's recent rule revisions included in today's proposed action, and have determined that the NSR/PSD program meets the current requirements in 40 CFR 51.165 and 51.166. Accordingly, EPA proposes in this action to approve the specified changes into the Federally approved SIP.

C. Agricultural Operations (as Specified in Oregon Revised Statute 468A.020)

The CAA does not provide an exemption for agricultural operations while, prior to 2007, Oregon's State law exempted most agricultural operations from air quality regulations. To address this discrepancy, the 2007 Oregon Legislature (in accordance with Oregon Senate Bill 235) updated Oregon's air quality law (Oregon Revised Statute (ORS) 468.020 and 468A.020) to be consistent with the Federal CAA enabling the regulation of air emissions from agricultural sources if necessary to implement the Federal CAA. The Oregon Environmental Quality Commission in turn adopted rule amendments to OAR 340–200–0030, 340–210–0205, and 340–264–0040 to align these rules with ORS 468A.020 and to make revisions to Oregon's SIP and the Oregon title V operating permit program. The revisions to OAR 340–200–0030, 340–210–0205, and 340–264–0040 were submitted to EPA by ODEQ on October 8, 2008. OAR rules now allow agricultural air quality pollution sources to be regulated in Oregon as necessary to meet CAA requirements.

EPA believes that the revised ORS 468A.020 (in conjunction with the corresponding revisions to the OAR 340–200–0030, 340–210–0205, and 340–264–0040) meet CAA requirements and, therefore, we propose to incorporate these revised OAR provisions into the Federally approved Oregon SIP.

D. Permitting Rule Corrections, Clarifications and Streamlining

EPA is proposing to take action on portions of the following three SIP submittals by ODEQ that correct previous errors, provide clarification and streamline air quality permitting rules in the State of Oregon. These rules are described with additional specificity in section E of this notice.

1. Rule Revisions in the October 10, 2008, SIP Submittal

In 2001, ODEQ streamlined the Air Quality Program's permitting program which was previously approved by EPA. In 2007, ODEQ's rulemaking further streamlined and updated the permitting process by clarifying requirements, eliminating duplicative and conflicting standards; keeping rules in line with Federal requirements, and correcting errors. This rulemaking package was submitted by ODEQ to EPA as a SIP revision on October 10, 2008. The SIP submittal covers revisions to OAR chapter 340, divisions 200, 208, 209, 214, 216, 218, 228, 232, 234 and 236 and EPA is proposing to approve incorporation of these provisions into the Federally approved SIP. The rule revisions in the October 10, 2008 SIP submittal:

(1) Add the chemical HFE–7300 to a list of compounds exempt from the definition of volatile organic compounds (VOC), or ground-level ozone precursors to be consistent with Federal regulations;

(2) Revise Excess Emissions rules to address the factors which ODEQ will take into consideration to determine how it will exercise its enforcement discretion with respect to excess

[11] 67 FR 80221 (December 31, 2002).

[12] 67 FR 80241.

emissions incidents meeting specified criteria;

(3) Delete unused Basic Permit categories in the Air Contaminant Discharge Permit (ACDP) rules that have been replaced by other permit categories;

(4) Update, correct errors, and clarify general permits for asphalt plants, boilers, concrete plants, rock crushers, and wood products facilities (These changes clarify monitoring, reporting and compliance procedures in division 216 (ACDPs) and include a provision that facilities with ACDPs may not be operated if the permit expires or is terminated, unless a timely renewal application has been submitted or another type of permit has been issued. The revisions also clarify that for facilities with title V or ACDPs, requirements established in preceding permits remain in effect unless specifically modified or terminated.);

(5) Change the averaging time in the sulfur dioxide standards for fuel-burning equipment from two hours to three hours to align with Federal standards (refer to section D, division 228 of this proposal—Requirements for Fuel Burning Equipment and Fuel Sulfur Content—for a complete discussion of the revised averaging time of the sulfur dioxide emission standards);

(6) Add a requirement for prior notification for those seeking to avail themselves of the exemption allowing a higher (currently SIP-approved) emission rate for burning salt laden wood waste;

(7) SIP-strengthening measures that replace outdated regulations governing wigwam burners with a state-wide prohibition on their use;

(8) Streamline the kraft pulp mill rules (in division 234) by clarifying permitting and compliance determinations, and eliminating unnecessary reporting, which includes removing a Director's discretion reference in the definition of ''Daily Arithmetic Average'' allowing alternatives to emission limits, testing or monitoring methods without prior EPA approval, removing a section on submission of plans for construction and modification because general permitting regulations in division 210 address these requirements, removing a section requiring use of obsolete sodium ion probe, as well as clarifying Federal New Source Performance Standards requirements that apply to kraft pulp mills;

(9) Specifies average hourly emission rate calculation procedures and measurement methods for board products manufacturing.

These changes clarify, correct and update Oregon's existing rules to be consistent with Federal regulations as well as streamline the permitting process and are proposed for approval into the SIP.

It should also be noted that on November 5, 1999, ODEQ submitted a complete rule renumbering to EPA for approval. On January 22, 2003 (68 FR 2891), we approved most of these new divisions but at that time did not take action on division 208 (Visible Emissions and Nuisance Requirements). We are now proposing to approve rules 0010 (Definitions), 0100 (Visible Emissions, Applicability), 0110 (Visible Emissions,Visible Air Contaminant Limitations), 0200 (Fugitive Emissions Requirements, Applicability) and 0210 (Fugitive Emissions Requirements) of division 208 into the Oregon SIP which will replace division 21, rules 015, 050, 055, and 060.

Additionally, we are proposing to approve Oregon's current excess emission rules (division 214, rules 0300 through 0360) into the Oregon SIP. Upon approval, these division 214 rules will replace the Federally-approved division 28 which will be removed from the SIP. EPA finds that the division 214 rules included in the October 10, 2008, SIP submittal conform to Federal guidance related to excess emissions, and proposes to incorporate these rules into the SIP. Oregon's excess emission provisions specify the factors that the State will take into account regarding the exercise of its enforcement discretion in response to excess emissions.

Finally, on January 18, 2007, EPA added 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (also known as HFE–7300) to the list of compounds [13] which are excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation (72 FR 2193—2196). Exempting HFE–7300 from the definition of VOC in OAR 340–200–0020 is consistent with Federal regulations.

2. Rule Revisions in the March 17, 2009, SIP Submittal

The Stationary Source PSEL rule (OAR chapter 340, division 222) sets limits on emissions of specified regulated air pollutants. The primary purpose of establishing a PSEL is to assure compliance with ambient air standards and PSD increments, which regulate criteria pollutants (*i.e.,* particulate matter, ground-level ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and lead).

The March 17, 2009, SIP submittal exempts pollutants regulated by the Accidental Release Prevention rules and the Early Reduction High Risk Pollutant rules from regulation under the PSEL rule. These pollutants were erroneously included in ODEQ's previous rule and have subsequently been removed. The Accidental Release Prevention rule (OAR–244–0230) was established to require businesses storing large quantities of hazardous materials to have a Risk Management Plan to prevent the accidental release of those regulated substances. The Early Reduction High Risk Pollutants rules (OAR 340–244–0120) are used to allow a source to make early voluntary emission reductions of listed chemicals in order to be allowed greater flexibility later when complying with new Federal regulations. These programs are not implemented through the PSEL rule and do not depend on that rule for implementation.

3. Rule Revisions in the June 23, 2010, SIP Submittal

Sections 110(a)(1) and (2) of the Federal CAA requires States to submit changes to SIP interstate transport provisions to EPA for approval. The rule revisions submitted to EPA on June 23, 2010, are needed to update Oregon's SIP and meet EPA infrastructure requirements. The SIP submittal covers revisions to OAR chapter 340, divisions 200, 202, 204, and 206.

These rule revisions include provisions necessary to address changes to the NAAQS for $PM_{2.5}$, ozone and lead. Specifically these revisions add $PM_{2.5}$ to the list of regulated air pollutants so that Oregon no longer needs to rely on a surrogacy policy; include $PM_{2.5}$ thresholds for significant harm, $PM_{2.5}$ levels for triggering alerts, warnings, and emergencies (developed by ODEQ pursuant to the requirements of 40 CFR 51.151); include $PM_{2.5}$ non-attainment area boundary descriptions for the cities of Klamath Falls and Oakridge; and, in accordance with EPA regulations, exempt dimethyl carbonate and propylene carbonate from the definition of VOC. On February 20, 2009, EPA added dimethyl carbonate and propylene carbonate to the list of compounds (40 CFR 51.100(s)) which are excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation (74 FR 3437–3441). Exempting dimethyl carbonate and propylene carbonate from the definition of VOC in OAR 340–200–0020 will make Oregon rule consistent with Federal regulations.

[13] *See* 40 CFR 51.100(s).

E. Significant Changes to Oregon's SIP

The docket to today's proposed action includes a technical support document which describes in more detail the substantive changes to the Oregon rules that have been submitted by ODEQ as revisions to the SIP, EPA's evaluation of the changes, and the basis for EPA's action.

A summary of significant regulatory changes proposed for incorporation into the SIP under today's proposal are provided below.

Division 200 General Air Pollution Procedures and Definitions

This division includes ODEQ's general air quality definitions (rule 0020), a list of abbreviations and acronyms (rule 0025), general exceptions (rule 0030), provisions for compliance schedules (rule 0050), and rules for conflicts of interest and makeup of boards (rules 0100 to 0120).

ODEQ has revised the method of setting the starting emission level, or netting basis, for counting emission changes for new and expanding facilities when they are initially permitted. Under the current SIP, to ensure that Oregon's NSR/PSD program is protective, companies are required to evaluate the air quality effects that would occur if a new or expanded facility operated at its capacity. Once this level is approved, it is added to a facility's netting basis even though the facility may never actually operate at that level. This unrealistically high starting emission level could allow a future expansion to avoid NSR/PSD. To prevent this, ODEQ has added a process to reset the netting basis once a new or expanded facility has been operating for up to 10 or 15 years to establish a realistic level. This applies to major GHG sources that were permitted but not yet operating before the GHG rules were adopted and to future NSR/PSD sources. The process will not limit the ability of a facility to operate permitted equipment, but will prevent use of the added netting basis until the level is reset.

General Definitions 340–200–0020

Actual emissions—The rule revision adds provisions in definition of actual emissions for sources that had not begun normal operation during the baseline period but were approved or permitted to construct and operate. Oregon revised its major source permitting program by reducing the netting basis from potential to emit (PTE) down to the highest actual emissions at the end of the baseline period for sources approved under division 224. This will be required before any future netting can take place and will prevent sources from netting out of NSR/PSD. Sources that reduce actual emissions because of voluntary controls will not lose that portion of the netting basis. This reduction will not affect the PSEL so sources with NSR/PSD permits will be able to utilize permitted emission units up to their permitted PTE without going through NSR/PSD again. ODEQ also revised its major source permitting program by reducing the netting basis from PTE down to the highest actual emissions in the last 10 years since the date of permit issuance for sources permitted under division 224 (Major NSR which includes PSD).

The revision to the definition of actual emissions also adds (1) a provision for sources that had not begun normal operation but were permitted under division 224 to reset actual emissions, (2) a provision to reduce PTE to actual emissions for sources that had not begun normal operations but were permitted to construct and operate under division 224, (3) a provision to reduce PTE to actual emissions for sources permitted under division 224 or approved under division 210 (Stationary Source Notification Requirements) after the baseline period, and (4) adds aggregate insignificant emissions threshold for $PM_{2.5}$ in $PM_{2.5}$ nonattainment areas. This makes $PM_{2.5}$ consistent with the PM_{10} threshold, which is 5% of the significant emission rate (SER) of 5 tons in Medford and other nonattainment areas in older rules.

Aggregate insignificant emissions—The revision to the definition of aggregate insignificant emissions adds an emissions threshold for GHG. The *de minimis* level for GHG is set at the State of Oregon GHG reporting threshold (2,756 tons CO2e).

Baseline Emission Rate—The revised definition for baseline emission rate does not include a specific rate for $PM_{2.5}$ because $PM_{2.5}$ will be ratioed to PM_{10} for both netting basis and PSEL. The revised definition includes a baseline emission rate for GHG with the first permit action after July 1, 2011, since that is when GHG sources are required to get permits for GHGs alone.

The revised definition further adds a provision for recalculating the baseline emission rate if actual emissions are reset in accordance with the definition of actual emissions. The revised definition also adds a provision for freezing only the production basis used to establish the baseline emission rate, not the entire baseline emission rate.

Biomass—The revised rule adds a definition of biomass and defers carbon dioxide (CO_2) emissions from biomass in accordance with EPA's July 2011 deferral. The application of the PSD and title V permitting requirements to CO_2 emissions from bioenergy and other biogenic stationary sources has been deferred for a period of 3 years.

Criteria Pollutant—The revised rule adds $PM_{2.5}$ to the definition of criteria pollutant.

Federal Major Source—The revised rule adds a GHG threshold of 100,000 tons CO2e per year to definition of Federal Major Source consistent with EPA's GHG Tailoring Rule and includes fugitive emissions in the definition of major modification. This inclusion clarifies that fugitive emissions must be included in the major NSR applicability. The GHG threshold in 340–200–0020(55) is consistent with the requirements in the GHG Tailoring Rule.

Major Modification—The definition of major modification has been revised. The revised definition adds a provision stating that major modifications for precursors are also major modifications for ozone and $PM_{2.5}$. This revision aligns the definition with EPA rules. The revised definition also specifies (1) that a major modification is triggered if the PSEL exceeds the netting basis, (2) the type of accumulation of physical changes and changes in operation that trigger a major modification, (3) that fugitive emissions must be included in the major NSR applicability, (4) that emissions increases from the increased use of equipment permitted or approved to construct are not included in major modification applicability, and (5) when sources would trigger NSR with only a 1 ton/year increase.

The revised definition of major modification also states that the portion of the netting basis and PSEL that was based on PTE because the source had not begun normal operations must be excluded from major modification applicability until it is reset and deletes the exception for PCPs that has been removed from Federal regulations.

Major Source—The revised major source definition states that fugitive emissions must be included in determining whether or not a source is considered major. The revised definition also indicates that PTE calculations must include emissions increases due to the new or modified source.

Netting Basis—The revised netting basis definition states that the initial netting basis and PSEL for $PM_{2.5}$ and GHG will be established with the first permitting action issued after July 1, 2011, provided the permitting action

involved a public notice period that began after July 1, 2011 (*i.e.,* when major GHG sources will be required to obtain permits).

The revised definition also adds a provision that the initial netting basis and PSEL for $PM_{2.5}$ will be the $PM_{2.5}$ fraction of the PM_{10} netting basis and PSEL. ODEQ treats $PM_{2.5}$ and PM_{10} in a comparable manner since $PM_{2.5}$ is a subset of PM_{10}, which is a pollutant already addressed by the existing permitting rules. As a result, a facility's $PM_{2.5}$ fraction will be determined and used to calculate permitted levels for $PM_{2.5}$. This approach incorporates $PM_{2.5}$ at this time as if it had been part of the program all along; allowing previously approved expansions to continue to operate and new expansions to be reviewed consistent with State and Federal requirements. It also avoids the need to select a unique baseline period for counting changes in $PM_{2.5}$ emissions towards triggering NSR/PSD. Because the PM_{10} SER is 15 tons/year and the $PM_{2.5}$ SER is 10 tons/year, sources could retroactively trigger the $PM_{2.5}$ SER because of past approved increases in PM_{10}. As a result, ODEQ may conduct a one time 5 ton true up to eliminate this possibility.

The revised definition also sets the initial source-specific PSEL for a source with a PTE greater than or equal to the SER to be equal to the $PM_{2.5}$ fraction of the PM_{10} PSEL. The revision further clarifies when the netting basis is zero and when changes to the netting basis are effective and adds a provision to reduce the netting basis from PTE for sources permitted under OAR 340–224 (Major NSR) after the baseline period.

Opacity and Source Test—The reference to Director's discretion to allow alternatives to emission limits, testing or monitoring methods in Federal rules or the SIP without prior EPA approval has been deleted from the definitions of opacity and source test.

$PM_{2.5}$—The revised $PM_{2.5}$ definition adds EPA's new reference test methods and adds a provision for $PM_{2.5}$ precursors. This definition is consistent with EPA's rules for purposes of title V and NSR.

Regulated Pollutant—The revised definition for regulated pollutant includes precursors and GHGs and clarifies that only regulated pollutants with significant emissions are subject to NSR.

The revised definitions discussed above are consistent with the EPA definition in 40 CFR 51.165(a)(1) and 51.166(b).

Exceptions 340–200–0030

The rule was revised to clarify that the statutory exemption for agricultural operations and equipment do not apply to the extent necessary to implement the CAA. This allows agricultural operations and equipment to be regulated as necessary in Oregon to meet CAA requirements.

Division 200 Tables

The Significant Air Quality Impact, Significant Emission Rates, *De minimis* Emission Levels, and Generic PSEL tables (Tables 1 through 5) in division have also been revised. The tables add: (1) EPA-adopted $PM_{2.5}$ significant impact levels; (2) EPA-adopted SERs for GHG, direct $PM_{2.5}$, $PM_{2.5}$ precursors and VOC precursors; (3) *de minimis* levels for GHG, for $PM_{2.5}$ in the Medford AQMA, and for direct $PM_{2.5}$; and (4) a generic PSEL for $PM_{2.5}$ and GHG. The de minimis level for GHG has been set at the State of Oregon GHG reporting threshold. The de minimis levels for $PM_{2.5}$ are consistent with PM_{10} and the generic PSEL for GHG is based on proposed SER minus 1000 tpy. In addition, the generic PSEL for $PM_{2.5}$ is based on the proposed SER minus 1 tpy, consistent with other criteria pollutants.

Division 202 Ambient Air Quality Standards and PSD Increments

This division contains the State ambient air quality standards and the PSD increments.

Definitions 340–202–0010

Baseline Calculation—The revised definition clarifies that actual emission increases from any source or modification (not just major sources and major modifications) on which construction commenced after January 6, 1975, cannot be included in the baseline calculation. It also adds the baseline concentration for PM_{10} in the Medford-Ashland AQMA from the definition in division 225 (Air Quality Analysis Requirements) and the baseline concentration year for $PM_{2.5}$ that is set on the year when ambient monitoring was done and when the increment was proposed.

Ambient Air Quality Standards for Suspended Particulate Matter 340–202–0060, Ozone 340–202–0090 and Lead 340–202–0130

The revised rules update the Oregon's ambient air quality standards to be consistent with Federal NAAQS by adding the 2006 annual average and 24-hour Federal standards for $PM_{2.5}$, the 2008 8-hour Federal standard for ozone and the 2010 one-hour Federal standard for lead.

Division 204 Designation of Air Quality Areas

This division identifies the carbon monoxide, PM_{10}, and ozone nonattainment areas in the State of Oregon.

Designation of Nonattainment Areas 340–204–0030

The rule was revised to add two $PM_{2.5}$ nonattainment areas, Klamath Falls and Oakridge, that were designated by EPA to not be in attainment of the 2006 24-hour $PM_{2.5}$ NAAQS (74 FR 58688, November 13, 2009).

Division 206 Air Pollution Emergencies

This division establishes criteria for identifying and declaring air pollution episodes at levels below the level of significant harm. The division was revised to add a significant harm level for $PM_{2.5}$ of 350.5 $\mu g/m^3$ (24-hour average), an air pollutant alert level for $PM_{2.5}$ of 140.5 $\mu g/m^3$ (24-hour average), an air pollution warning level of 210.5 $\mu g/m^3$ (24-hour average) for $PM_{2.5}$, and an air pollutant emergency level of 280.5 $\mu g/m^3$ (2-hour average) for $PM_{2.5}$.

Division 214 Stationary Source Reporting Requirements

This division contains ODEQ's provisions for reporting and recordkeeping, information requests (section 114 authority), credible evidence, business confidentiality, emission statements, and excess emissions.

Excess Emissions and Emergency Provisions 340–214–0300 Through 0360 (Formally in Division 28)

The applicability of the Excess Emissions and Emergency Provisions rule has been revised to align with EPA policy regarding applicability, planned start-up and shutdown, schedule maintenance, other excess emissions, enforcement action criteria, and affirmative defense by clarifying that the affirmative defense of emergency does not take away ODEQ's enforcement discretion, but is relevant when evaluating a violation to determine the level of penalty. It also clarifies that excess emission reports must include whether a source followed approved procedures for startup, shutdown or maintenance activity when applicable and consolidates and further describes criteria for demonstrating emergency as an affirmative defense. The rule revisions are consistent with EPA policy

as specified in 1999 memorandum by EPA.[14]

Division 216 Air Contaminant Discharge Permits

This division is the ODEQ Federally-enforceable State Operating Permit program, and is also the administrative permit mechanism used to implement the notice of construction and major NSR programs.

The revisions to the rules in division 216 clarify that facilities with ACDPs may not be operated if the permit expires or is terminated, unless a timely renewal application has been submitted or another type of permit has been issued. The revisions also clarify that for facilities with title V or ACDPs, requirements established in preceding permits remain in effect unless specifically modified or terminated.

In addition, the following unused Basic Permit categories currently in the Oregon SIP have been deleted from this rule and, following this action, are proposed to be removed from the SIP:

(1) Wood Furniture and Fixtures more than 5,000 but less than 25,000 board feet/maximum 8 hour input.

(2) Flour, Blended and/or Prepared and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput.

(3) Grain Elevators used for intermediate storage more than 1,000 but less than 10,000 tons/year throughput.

(4) Millwork (including kitchen cabinets and structural wood members) more than 5,000 but less than 25,000 bd. ft./maximum 8 hour input.

(5) Non-Ferrous Metal Foundries more than one ton/yr. but less than 100 tons/yr. of metal charged.

(6) Pesticide Manufacturing more than 1,000 tons/yr. but less than 5,000 tons/yr.

(7) Sawmills and/or Planing Mills more than 5,000 but less than 25,000 board feet/maximum 8 hour finished product.

(8) Seed Cleaning and Associated Grain Elevators more than 1,000 but less than 5,000 tons per year throughput.

(9) Bakeries, Commercial baking more than 500 tons of dough per year.

(10) Cereal Preparations and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput.

(11) Coffee Roasters roasting more than 6 tons coffee beans in a year, but less than 30 tons/yr.

In 2001, ODEQ instituted 19 Basic Permit categories to track small air emission sources. ODEQ intended that basic permits function as a registration, or means to track sources with potential to grow or require a different type of permit and to trigger control requirements. The purpose was to anticipate emission increases and reduce potential for source violations. Because no basic permits have been issued in the above categories, removing these categories does not result in termination of any existing permits. A general provision in the ODEQ's ACDP rules (division 216) ensures that any facility with significant emissions is regulated through a permit.

The rule revision also delegates authority to Lane Regional Air Protection Agency to implement ACDP and Oregon title V operating permit programs for regulation of $PM_{2.5}$ and GHG within its area of jurisdiction. It also adds: (1) $PM_{2.5}$ and GHGs to pollutant-based source categories requiring ACDPs, (2) a 5 ton $PM_{2.5}$ threshold for requiring a permit in nonattainment areas to provide more protection for the area through source surveillance, and (3) a 100,000 ton GHG CO2e threshold for GHG permitting, consistent with the GHG tailoring rule. These rule revisions are proposed for approval into the SIP.

Division 224 Major New Source Review

This division contains the ODEQ major source permit to construct programs as required by title I, parts C and D of the Act. It requires an ACDP prior to beginning construction on a new major source or major modification.

This division applies to new major sources and major modifications and requires that no owner or operator begin actual construction without first having received an ACDP and having satisfied the requirements of division 224.

The division includes the procedural requirements for the NSR program, including specifying the information that must be submitted in a permit application, the time period for which the approval to construct is valid, the obligation to comply with all applicable requirements, and the time period that the new or modified source can operate without applying for a title V operating permit, and when a title V operating permit must be revised before commencing construction or operation. The division also includes the procedures for processing permit applications.

The division also includes the substantive requirements which must be met for approval of a new major source or major modification. These include the requirement that the owner or operator must demonstrate the ability of the source to comply with all applicable requirements.

ODEQ's major source permit to construct program as revised in division 224 complies with EPA's requirements in 40 CFR 51.165 through 51.166 and ensures that new and modified major sources will not cause or contribute to violations of any NAAQS. Therefore, EPA proposes to approve these provisions into the Oregon SIP.

Applicability and General Prohibitions 340–224–0010

The rule revision clarifies that division 224 (Major NSR) applies to the regulated pollutant for which the area is designated nonattainment or maintenance within nonattainment and maintenance areas, as well as to the regulated pollutant for which the area is designated attainment or unclassified within attainment and unclassifiable areas. It also adds applicability requirements for GHG PSD permitting of sources that have already triggered NSR/PSD for other pollutants and that are major for GHGs and trigger PSD. This is consistent with EPA's Tailoring Rule for purposes of title V and PSD.

Requirements for Sources in Nonattainment Areas 340–224–0050

The rule revision adds requirements for $PM_{2.5}$ precursors to sources in designated $PM_{2.5}$ nonattainment areas (*i.e.,* Oakridge and Klamath Falls). It also clarifies that LAER applies to each emissions unit that emits the nonattainment pollutant or precursor not included in the most recent netting basis or included in the most recent netting basis but has been modified to increase actual emissions.

Requirements for Sources in Maintenance Areas 340–224–0060

The rule revision adds precursors to the list of pollutants subject to BACT in maintenance areas. It clarifies that BACT applies to each emissions unit that emits the maintenance pollutant or precursor not included in the most recent netting basis or included in the most recent netting basis but has been modified to increase actual emissions.

Prevention of Significant Deterioration Requirements in Attainment or Unclassified Areas 340–224–0070

The rule revision: (1) Adds precursors to the BACT requirement, (2) clarifies that BACT applies to each emissions unit that emits the nonattainment pollutant or precursor not included in the most recent netting basis, or is

[14] Memorandum from Steven A. Herman entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, September 20, 1999.

included in the most recent netting basis but has been modified to increase actual emissions, (3) indicates that the required air quality analysis is for the pollutant with increases above the SER over the netting basis, and (4) adds a provision that increases above the SER for direct $PM_{2.5}$ or $PM_{2.5}$ precursors also trigger an analysis of $PM_{2.5}$.

Division 225 Air Quality Analysis Requirements

This division contains all of the modeling, monitoring, impact analysis, and net air quality benefit requirements that are necessary to ensure ambient air quality requirements are met in the permitting process. The division also includes provisions which specify the technical information and processes to be used in air quality impact analyses.

The provisions for demonstrating net air quality benefit in the revisions to division 225 comply with the CAA and EPA's requirements for emission offsets (section 173 of the Act, 40 CFR 51.165(a) and 40 CFR part 51, appendix S, Emission Offset Interpretative Ruling). EPA is therefore proposing to approve these provisions as complying with part D of the CAA.

Definitions 340–225–0020

Baseline Concentration—The revised baseline concentration definition adds a baseline concentration year of 2007 for $PM_{2.5}$ consistent with EPA regulations. The definition of baseline concentration is consistent with EPA's definitions in 40 CFR 51.165(a) and 51.166(b).

Requirements for Analysis and Demonstrating Compliance in Maintenance Areas 340–225–0045 and PSD Class I, II and III Areas 340–225–0050 and 0060

The rule revisions clarify that a single source impact analysis is sufficient to show compliance with standards and increments for only the pollutants that trigger PSD, and that a single source impact analysis is for emission increases equal to or greater than a significant emission rate above the netting basis due to the proposed source or modification. The revisions also add a $PM_{2.5}$ significant monitoring concentration of 4 $\mu g/m^3$ as specified in EPA's $PM_{2.5}$ NSR/PSD implementing rule for use in determining the need for preconstruction monitoring of a proposed source or modification in a PSD Class II and III area.

Requirements for Demonstrating a Net Air Quality Benefit 340–225–0090

The rule revision adds $PM_{2.5}$ to the list of pollutants for non-ozone areas and adds $PM_{2.5}$ precursor, SO_2 and NO_X offset ratios for non-ozone areas. These offset ratios are based on levels established by EPA. The revision also indicates that precursor emissions can be used to offset direct $PM_{2.5}$ and vice versa. We are taking no action on these interpollutant offset ratios for $PM_{2.5}$ at this time to give Oregon time to provide a demonstration that these interpollutant offset ratios are NAAQS protective in Oregon or alternatively revise these ratios in accordance with the July 21, 2011, memorandum by EPA that revises the Federal interpollutant offset policy.[15]

The rule revision further adds an alternative provision for small scale local energy projects (and related infrastructure) located in nonattainment and maintenance areas indicating that the net air quality benefit requirement is satisfied if the nonattainment or maintenance pollutant emissions are offset using the offset ratios specified in this rule, provided that the proposed major source or major modification does not cause or contribute to a violation of the NAAQS or otherwise pose a material threat to compliance with air quality standards in the nonattainment area. The State of Oregon House Bill 2952 amended ORS 468A.040 to add an exception for small scale local energy projects regarding net air quality benefit.

Division 228 Requirements for Fuel Burning Equipment and Fuel Sulfur Content

This division provides sulfur content of fuel requirements and general emission standards for fuel burning equipment.

Sulfur Dioxide Standards 340–228–0200

To be consistent with Federal emission standards and the reference source test method, the averaging time for sulfur dioxide emission standards for fuel-burning equipment in this rule has been changed from two hours to three hours. As part of their June 23, 2010, SIP submittal, ODEQ provided a demonstration that this rule change will have no discernable effect on the air quality or on the stringency of their revised emission standard. EPA has reviewed ODEQ's demonstration and has determined that the revised rule will not interfere with the attainment or maintenance of the NAAQS for sulfur dioxide. Therefore, EPA proposes to approve these regulations.

Division 234 Emission Standards for Wood Products Industries

The division establishes emission standards and monitoring and reporting requirements for wigwam waste burners, kraft pulp mills, neutral sulfite semi-chemical (NSSC) pulp mills, sulfite pulp mills, and board products industries (veneer, plywood, particleboard, hardboard).

Definitions 340–234–0010

Wigwam Waste Burner—The definition of wigwam waste burner has been revised. The outdated regulations governing the use of wigwam waste burners have been deleted and a prohibition statewide has been added.

III. EPA's Proposed Action

Consistent with the discussion above, EPA proposes to approve most of the submitted SIP provisions and to take no action on certain other provisions, as discussed below. This action will result in proposed changes to the Oregon SIP in 40 CFR part 52, subpart MM.

A. Rules To Approve Into SIP

EPA proposes to approve into the Oregon SIP at 40 CFR part 52, subpart MM, the following revisions to chapter 340 of the OAR listed in Table 2. It is important to note that in those instances where ODEQ submitted multiple revisions to a single rule of chapter 340 of the OAR, the most recent version of that rule (based on State effective date) is proposed to be incorporated into the SIP since it supersedes all previous revisions.

[15] In a memorandum from Gina McCarthy, EPA Assistant Administrator, entitled "Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles ($PM_{2.5}$)," July, 21, 2011, EPA revised its policy originally set forth in the 2008 $PM_{2.5}$ New Source Review Implementations Rule (the 2008 final rule, 73 FR 28321) concerning the development and adoption of interpollutant trading (offset) provisions for $PM_{2.5}$ under state nonattainment area NSR programs for $PM_{2.5}$. As a result of our reconsideration of the policy, EPA no longer supports the ratios provided in the preamble to the 2008 final rule as presumptively approvable ratios for adoption in SIPs containing nonattainment NSR programs for $PM_{2.5}$. This revised policy does not affect the EPA rule provisions that allow states to adopt as part of their nonattainment NSR programs for $PM_{2.5}$ appropriately supported interpollutant offset provisions involving $PM_{2.5}$ precursors.

TABLE 2—ODEQ REGULATIONS FOR PROPOSED APPROVAL

State citation	Title/subject	State effective date	Explanation
OAR 340–200—General Air Pollution Procedures and Definition			
0010	Purpose and Applicability	11/8/2007	
0020	General Air Quality Definitions	5/1/2011	
0025	Abbreviations and Acronyms	5/1/2011	
0030	Exceptions	9/17/2008	
OAR 340–202—Ambient Air Quality Standards and PSD Increments			
0010	Definitions	5/1/2011	
0060	Suspended Particulate Matter	5/1/2011	
0090	Ozone	5/21/2010	
0130	Ambient Air Quality Standard for Lead	5/21/2010	
0210	Ambient Air Increments	5/1/2011	
OAR 340–204—Designation of Air Quality Areas			
0010	Definitions	5/21/2010	
0030	Designation of Nonattainment Areas	5/21/2010	
OAR 340–206—Air Pollution Emergencies			
0010	Introduction	5/21/2010	
0030	Episode Stage Criteria for Air Pollution Emergencies.	5/21/2010	
OAR 340–208—Visible Emissions and Nuisance Requirements			
0010	Definitions	11/8/2007	
0100	Visible Emissions, Applicability	11/8/2007	
0110	Visible Air Contaminant Limitations	11/8/2007	
0200	Fugitive Emission Requirements, Applicability	11/8/2007	
0210	Fugitive Emission Requirements, Requirements	11/8/2007	
OAR 340–209—Public Participation			
0040	Public Notice Information	11/8/2007	
0070	Hearings and Meeting Procedures	11/8/2007	
0080	Issuance or Denial of a Permit	11/8/2007	
OAR 340–210—Notice of Construction and Approval of Plans			
0205	Applicability	9/17/2008	
OAR 340–214—Stationary Source Reporting Requirements			
0010	Definitions	11/8/2007	
0300 (Formally OAR–340–28–1400)	Purpose and Applicability	11/8/2007	
0310 (Formally OAR–340–28–1410)	Planned Startup and Shutdown	11/8/2007	
0320 (Formally OAR–340–28–1420)	Scheduled Maintenance	11/8/2007	
0330 (Formally OAR–340–28–1430)	Upsets and Breakdowns	11/8/2007	
0340 (Formally OAR–340–28–1440)	Reporting Requirements	11/8/2007	
0350 (Formally OAR–340–28–1450)	Enforcement Action Criteria	11/8/2007	
0360	Emergency as an Affirmative Defense	11/8/2007	
OAR 340–216—Air Contaminant Discharge Permits			
0020 and Table 1	Applicability	5/1/2011	
0040	Application Requirements	5/1/2011	
0060	General ACDPs	5/1/2011	
0064	Simple ACDPs	5/1/2011	
0082	Termination or Revocation of an ACDP	11/8/2007	
OAR 340–222—Stationary Source Plant Site Emission Limits			
0020	Applicability	8/29/2008	
OAR 340–224—Major New Source Review			
0010	Applicability and General Prohibitions	5/1/2011	
0050	Requirements for Sources in Nonattainment Areas.	5/1/2011	

TABLE 2—ODEQ REGULATIONS FOR PROPOSED APPROVAL—Continued

State citation	Title/subject	State effective date	Explanation
0060	Requirements for Sources in Maintenance Areas	5/1/2011	
0070	Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas.	5/1/2011	
OAR 340–225—Air Quality Analysis Requirements			
0020	Definitions	5/1/2011	
0030	Procedural Requirements	5/1/2011	
0045	Requirements for Analysis in Maintenance Areas	5/1/2011	
0050	Requirements for Analysis in PSD Class II and Class III Areas.	5/1/2011	
0060	Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas.	5/1/2011	
0090	Requirements for Demonstrating a Net Air Quality Benefit.	5/1/2011	EPA is not taking action on the inter-pollutant offset ratios provided in 0090(2)(a)(C).
OAR 340–228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content			
0020	Definitions	11/8/2007	
0200	Sulfur Dioxide Standards	11/8/2007	
0210	Grain Loading Standards	11/8/2007	
OAR 340–232—Emission Standards for VOC Sources			
0010	Introduction	11/8/2007	
OAR 340–234—Emission Standards for Wood Products Industries			
0010	Definitions	11/8/2007	
0100	Wigwam Waste Burners—Statement of Policy and Applicability.	11/8/2007	
0110	*Wigwam Waste Burners—Authorization to Operate a Wigwam Burner.*	*11/8/2007*	*Rule repealed, remove from SIP.*
0120	*Wigwam Waste Burners—Emission and Operation Standards for Wigwam Waste Burners.*	*11/8/2007*	*Rule repealed, remove from SIP.*
0130	*Wigwam Waste Burners—Monitoring and Reporting.*	*11/8/2007*	*Rule repealed, remove from SIP.*
0140	Wigwam Waste Burners—Existing Administrative Agency Orders.	11/8/2007	
0210	Kraft Pulp Mills—Emission Limitations	11/8/2007	
0230	*Kraft Pulp Mills—Plans and Specifications*	*11/8/2007*	*Rule repealed, remove from SIP.*
0240	Kraft Pulp Mills—Monitoring	11/8/2007	
0250	Kraft Pulp Mills—Reporting	11/8/2007	
0260	*Kraft Pulp Mills—Upset Conditions*	*11/8/2007*	*Rule repealed, remove from SIP.*
0500	Board Product Industries—Applicability and General Provisions.	11/8/2007	
0510	Board Product Industries—Veneer and Plywood Manufacturing Operations.	11/8/2007	
0520	Board Product Industries—Particleboard and Manufacturing Operations.	11/8/2007	
0530	Board Product Industries—Hardboard Manufacturing Operations.	11/8/2007	
OAR 340–236—Emission Standards for Specific Sources			
0010	Definitions	11/8/2007	
0410	Hot Asphalt Plants—Control Facilities Required	11/8/2007	
OAR 340–264—Rules for Open Burning			
0040	Exemptions, Statewide	9/17/2008	

B. Rules on Which No Action Is Taken

The following provisions were included in the SIP submittals discussed above. However, EPA is not proposing to approve these provisions.

OAR 340–200–0040—State of Oregon Clean Air Act Implementation Plan.

OAR 340–215—Greenhouse Gas Reporting Requirements.

OAR 340–218 (0010, 0020, 0040, 0050, 0120, 0150, 0180, 0190 and

0250)—Oregon Title V Operating Permits.

OAR 340–228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content, Mercury Rules (0672 Emission Caps, 0673 Monitoring Requirements for the Hg Emission Standards, 0676 Heat Input Determinations 0674, 0676 Coal Sampling and Analysis, and 0678 Hg Mass Emissions Measurement Prior to Any Control Devices 0678).

OAR 340–228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content Federal Acid Rain Program (0300).

OAR 340–230—Incinerator Regulations.

OAR 340–234–0010—Standards for Wood Products Industries—EPA is not acting on references to total reduced sulfur from smelt dissolving tanks, sewers, drains, categorically insignificant activities, and wastewater treatment facilities in the revised definition of other sources.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 15, 2011.

Michelle L. Pirzadeh,

Acting, Regional Administrator, Region 10.

[FR Doc. 2011–24525 Filed 9–22–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 640

[Docket No. 100305126–1558–03]

RIN 0648–AY72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 10 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP), as prepared and submitted by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). If implemented, this rule would revise the lobster species contained within the fishery management unit, establish an annual catch limit (ACL) for spiny lobster, revise the Federal spiny lobster tail-separation permitting requirements, revise the regulations specifying the condition of spiny lobster landed during a fishing trip, modify the undersized attractant regulations, modify the framework procedures, and incorporate the state of Florida's derelict trap removal program into the Federal regulations that apply to the exclusive economic zone (EEZ) off Florida. Additionally, this rule would revise codified text to reflect updated contact information for the state of Florida and regulatory references for the Florida Administrative Code. The intent of this proposed rule is to specify ACLs for spiny lobster while maintaining catch levels consistent with achieving optimum yield (OY) for the resource.

DATES: Written comments must be received on or before October 24, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by NOAA–NMFS–2011–0106 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-rulemaking portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0106'' in the keyword search and click on ''search.'' To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0106'' in the keyword search and click on ''search.'' NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of documents supporting this proposed rule, which include a draft environmental impact statement and an initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or e-mail: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Gulf of Mexico (Gulf) and the South Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR parts 622 and 640 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The 2006 revisions to the Magnuson-Stevens Act require that in 2011, for FMPs for fisheries determined by the Secretary to not be subject to overfishing, ACLs must be established at a level that prevents overfishing and helps to achieve OY within a fishery. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from Federally managed stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Management Measures Contained in This Proposed Rule

This rule would remove four species from the FMP; establish an ACL and an ACT for spiny lobster; revise the requirements for the Federal spiny lobster tail-separation permit; revise the regulations specifying the condition of lobster landed during a fishing trip; modify the regulations with respect to the use of undersized attractants; modify the framework procedures; and incorporate the state of Florida's derelict trap removal program into the Federal regulations that apply to the EEZ off of Florida. Additionally, this rule would revise codified text throughout the spiny lobster regulations to update relevant contact information and regulatory references.

Removal of Species From the Fishery Management Unit

Five species of lobster are currently within the FMP: the Caribbean spiny lobster (*Panulirus argus*), the smoothtail spiny lobster (*Panulirus laevicaus*), the spotted spiny lobster (*Panulirus guttatus*), the Spanish slipper lobster (*Scyllarides aequinoctialis*), and the ridged slipper lobster (*Scyllarides nodifer*). At present, only the Caribbean spiny lobster and the ridged slipper lobster have associated regulatory text; the other species are in the fishery management unit for data collection purposes only. This rule would remove all species from the FMP except the Caribbean spiny lobster (spiny lobster). The Councils and NMFS have determined these other lobster species are not in need of Federal management at this time. Although these species are targeted in some areas, landings are relatively low. Furthermore, individual states have the option to extend their regulations into Federal waters for these other lobster species. Also, most landings of these other species are off Florida, and Florida regulations concerning the taking of egg-bearing females, or stripping or removing eggs, are more conservative than Federal regulations for most of these species. Therefore, if Florida were to extend its regulations into Federal waters, these species could receive greater protection than under current management. If landings or effort changed for the other lobster species and the Councils determined management at the Federal level was needed, these species could be added back into the FMP at a later date.

Spiny Lobster ACL and Accountability Measure

In 2006, the Magnuson-Stevens Act was re-authorized and included a number of changes to improve the conservation of managed fishery resources. Included in these changes are requirements that fishery management councils establish both a mechanism for specifying ACLs at a level such that overfishing does not occur in a fishery and accountability measures (AMs) to help ensure that ACLs are not exceeded and to mitigate any ACL overages that may occur. Guidance also requires fishery management councils to establish a control rule to determine allowable biological catch (ABC).

The Councils accepted the ABC control rule developed by the Gulf Council's Scientific and Statistical Committee (SSC), which set the ABC for spiny lobster at 7.32 million lb (3.32 million kg). The Councils chose not to set sector allocations and set a stock ACL equal to the ABC. Therefore, the spiny lobster stock ACL is proposed to be set at 7.32 million lb (3.32 million kg). An ACT was set at 90 percent of the ACL, which is 6.59 million lb (2.99 million kg). If the ACT is exceeded in any year, the Councils will convene a scientific panel to review the ACL and ACT, and determine if additional AMs are needed. The ACT is proposed to serve as the AM for the spiny lobster stock. Landings have not exceeded the ACT level since the 2000/2001 fishing year. Therefore, it is unlikely the ACT would be exceeded under the current ACT preferred alternative based on landings history. However, the updated framework procedure contained within this amendment would facilitate timely adjustments of the ACT or ACL if necessary.

Revisions to Federal Spiny Lobster Tail-Separation Permit Requirements

Spiny Lobster Amendment 1 (July 15, 1987, 52 FR 22659) initially implemented the Federal spiny lobster tail-separation permit. The original intent of the Councils was to confine holders of this permit to the commercial sector. However, the current requirements for obtaining the Federal spiny lobster tail-separation permit do not restrict the permit to commercial fishermen, which is contrary to the Councils' original intent. This rule would require applicants for a Federal spiny lobster tail-separation permit to possess either (1) A Federal spiny lobster permit or (2) a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement associated with a valid Florida Saltwater Products License.

Condition of Spiny Lobster Landed During a Fishing Trip

Under certain situations and with possession of a valid Federal tail-separation permit, Caribbean spiny lobster tails may be separated from the body onboard a fishing vessel. This tail-separation provision can create difficulties for law enforcement personnel in determining if the lobster were originally of legal size. This rule would require lobster to be landed either all whole or all tailed during a single fishing trip. Requiring lobsters to be landed all whole or all tailed would discourage selective tailing of potentially undersized lobsters and thereby aid the enforcement of the minimum size limit.

Use of Undersized Attractants

Federal regulations allow as many as 50 spiny lobsters less than the minimum size limit or one per trap, whichever is

greater, to be retained aboard a vessel to attract other lobsters for harvest. Currently, Federal regulations are not consistent with Florida regulations, which allow the retention of as many as 50 spiny lobsters less than the minimum size limit and one per trap. This rule would change the Federal regulations specific to the use of undersized attractants to be consistent with current Florida regulations. Additionally, although approximately 10 percent mortality is associated with the use of undersized attractants, traps using non-lobster bait or no bait at all take up to two to three times longer to harvest the same amount of lobsters as traps that use undersized attractants. This increase in effort may increase the bycatch and bycatch mortality of other species. Therefore, the use of undersized attractants that are consistent with Florida regulations provides both enforcement and biological benefits.

Modification of Generic Framework Procedures

To facilitate timely adjustments to harvest parameters and other management measures, the Councils have added the ability to adjust ACLs and AMs, and establish and adjust target catch levels, including ACTs, to the current framework procedures. These adjustments or additions may be accomplished through a regulatory amendment which is less time intensive than an FMP amendment. By including ACLs, AMs, and ACTs in the framework procedure for specifying total allowable catch, the Councils and NMFS would have the flexibility to more promptly alter those harvest parameters as new scientific information becomes available. The proposed addition of other management options into the framework procedures would also add flexibility and the ability to more timely respond to certain future Council decisions through the framework procedures.

Removal of Derelict Spiny Lobster Traps in the EEZ Off Florida

On August 27, 2009, an Endangered Species Act (ESA) biological opinion evaluating the impacts of the continued authorization of the spiny lobster fishery on ESA-listed species was completed. The opinion contained specific terms and conditions required to implement the prescribed reasonable and prudent measures, including consideration of alternatives to allow the public to remove trap-related marine debris in the EEZ off Florida. This proposed rule would authorize the removal of traps in Federal waters off Florida through Florida's trap cleanup program, as provided in existing Florida regulations. Florida's trap cleanup program includes provisions for public participation.

Revisions To Update Contact Information and Regulatory Reference Text

This rule proposes to revise a number of references within the regulations for spiny lobster. Specifically, this proposed rule would update the spiny lobster regulations with the contact information for the state of Florida administrative offices and the relevant references within the Florida statutes and administrative code that are contained within the Federal regulations in 50 CFR parts 622 and 640. These additional revisions are unrelated to the actions contained in Amendment 10.

Actions in Amendment 10 That Are Not Contained in This Rulemaking

Amendment 10 also contains non-regulatory actions to revise the definitions of management thresholds. Definitions of maximum sustainable yield (MSY), optimum yield (OY), overfishing, and overfished were set for Caribbean spiny lobster in Amendment 6 to the FMP. Currently, the Councils have different definitions for each reference point. Amendment 10 would set a single definition for each biological reference point that would be used by both Councils and allow for a more consistent management of spiny lobster.

Currently, no allocations are set between the commercial and recreational sectors for spiny lobster. The Councils considered setting such allocations, but instead chose to not sector allocations and therefore allow for a stock ACL, stock ACT, and AM that affects both sectors.

The Councils considered alternatives to meet requirements from the 2009 biological opinion to establish lobster closed areas and lobster gear trap line marking requirements to protect threatened and endangered species; however, they chose to take no action at this time to allow time for additional stakeholder input. The Councils intend to develop Amendment 11 to the Spiny Lobster FMP to implement these measures prior to the beginning of the next spiny lobster commercial fishing season that begins on August 6, 2012.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 10 and the FMP subject to this rulemaking, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The rule would affect all fishing in the EEZ that is managed under the FMP for Spiny Lobster in the Gulf and South Atlantic. Landings of spiny lobster occur predominantly in the Florida Keys (Monroe County) and elsewhere in south Florida. Relatively small (mostly confidential) amounts have been reported for other Gulf and South Atlantic states since 1977. Fishing for spiny lobster in Florida is managed cooperatively by the Councils and the state of Florida, which collects the data used to analyze the activity. Including fishing in Federal and state waters, the numbers of commercial vessels, commercial trips, and Florida spiny lobster trap landings, traps with commercial landings of spiny lobster in Florida have all declined substantially since the implementation of Florida's Trap Certificate Program in the early 1990's, and productivity (CPUE) has increased.

Businesses directly affected by the proposed rule include those engaged in commercial shellfish harvesting (NAICS code 114112) and for-hire fishing (NAICS code 713990), and they meet the respective Small Business Administration (SBA) criteria for being small businesses. Commercial and for-hire fishing vessels that fish for spiny lobster in state and Federal waters off Florida must meet applicable Florida permitting requirements. An estimated 781 vessels landed spiny lobster commercially in Florida, on average, in the last 5 years. This includes 274 vessels (1,977 trips) with landings from the EEZ off Florida, where an estimated 35 vessels (130 trips) landed both tailed and whole lobsters on the same trips.

On average, these 35 vessels have fewer, but longer trips, higher trip landings, haul more traps per trip, and they fish at greater depths. Another 23 vessels landed slipper lobster in Florida during that time. While the number of for-hire vessels that fish for spiny lobster in the EEZ off Florida is not known, it is likely that less than the 1,330 vessels that currently have the necessary Florida permits and licenses engage in for-hire fishing for spiny lobster in state and Federal waters. None of these for-hire vessels are believed to have State commercial fishing permits/licenses. The for-hire vessels target other species as well, because annual recreational landings of spiny lobster occur predominantly in late July through the first week of September.

The majority of the actions in this proposed rule are either administrative in nature or would be expected to accommodate status quo harvests or fishing behavior. The possible exception to this determination is the proposed action relative to the possession and landing of tailed lobsters in or from the EEZ. Available data do not allow the quantification of the number of vessels that may be affected by this proposed action. Approximately 35 vessels with commercial landings from the EEZ landed both tailed and whole lobsters on the same trips. The effect on these vessels of the requirement to land either all tailed or all whole lobsters on one trip is not known. The proposed action may be a problem for for-hire vessels with a limited holding capacity. It is believed that some for-hire vessels may have been tailing lobsters during trips. The solution for these vessels may simply be the purchase of additional ice chests to store harvested lobster. However, while this proposed action may be limiting for some for-hire vessels, this would not be expected to be a problem, on average, for the for-hire fleet because the majority of vessels would not be expected to engage in the practice of landing tailed lobsters, or depend on this type of business for a significant portion of their revenues. As a result, the actions in this rule would not be expected to significantly reduce profits for a substantial number of small entities. Public comment, however, is requested on this determination because of the absence of data related to the potential effects of the proposed action on the possession and landing of tailed lobsters from the EEZ.

Alternatives were considered regarding species other than Caribbean spiny lobster (spiny lobster) in the FMP, and the proposed action would remove the other four lobster species from the FMP. None of the alternatives would be expected have an economic impact on small entities because these species addressed are either not currently managed or are not significantly harvested. One alternative, the no-action alternative, would not meet the requirements of the Magnuson-Stevens Act because three species would have remained in the FMP for data collection purposes only without the specification of ACLs and AMs (which is no longer allowed under the Magnuson-Stevens Act). The other alternatives were not selected as preferred alternatives because the Councils determined that these species no longer required management at the Federal level because protection at the state level was adequate.

Among the alternatives considered for the action to set ACLs, the proposed action specifies a single (stock) ACL, whereby ACL = OY = ABC. The no-action alternative would not meet Magnuson-Stevens Act requirements. The remaining alternatives to the proposed action would specify higher or lower ACLs, with each alternative specifying either a single ACL for the entire fishery or sector specific ACLs, one ACL for the commercial sector, and another ACL for the recreational sector. Alternatives that would have resulted in sector ACLs were not selected because the adoption of sector ACLs would have been inconsistent with the decision to not adopt allocation ratios for the sectors. Among the alternatives that would establish stock ACLs, the proposed action would be expected to result in the greatest economic benefits because it would allow the greatest total harvest and support more recreational trips and commercial revenues without compromising the health of the resource or jeopardizing future economic benefits.

Several alternatives, including the no-action alternative, were considered for the action to set ACTs. The proposed action specifies an ACT which is less than the ACL. Although an ACT is not a required component of an FMP and the absence of an ACT would allow a harvest up to the level of the ACL, the no-action alternative was not selected because the Councils decided that an ACT was appropriate for this stock due to the uncertainty associated with harvest monitoring, particularly recreational landings. Similar to the action to specify the ACL, the remaining five alternatives to the proposed action would specify different ACTs, with each alternative specifying either a single ACT for the entire fishery or sector specific ACTs, one ACT for the commercial sector, and another ACT for the recreational sector. The alternatives that would have resulted in sector ACTs were not adopted because the adoption of sector ACTs would have been inconsistent with the decision to not select allocation ratios or ACLs for the sectors. Among the alternatives that would not establish sector ACTs, other than the no-action alternative, the proposed action would be expected to result in the greatest economic benefits because it would allow the greatest total harvest and support more recreational trips and commercial revenues.

Several alternatives, including the no-action alternative, were considered for the action to establish AMs. The no-action alternative would not meet the Magnuson-Stevens Act requirement to establish AMs. The proposed action would establish the ACT as the AM for the spiny lobster stock. With the exception of the no-action alternative and an option to establish combined sector AMs, the alternatives to the proposed action would be inconsistent with the adoption of other actions in this proposed rule. Absent sector allocations, ACLs, and ACTs, the adoption of sector AMs would be inappropriate. Further, adjustment of sector seasons is not practical in the absence of sector ACLs or ACTs. The option that would establish combined sector AMs was not adopted because the Councils felt the proposed action would provide an adequate buffer between the target level of harvest and the annual limit on harvest.

Among the alternatives, including the no-action alternative, considered to establish the framework procedure, the proposed action incorporates two of the alternatives, updating the current protocol for cooperative management and revising the current regulatory amendment procedures by adopting the base framework procedure. The no-action alternative was not selected because the current protocol is out of date with respect to terminology and relevant agency names and authorities, and the framework procedures are not consistent with current assessment and management methods. The proposed action would facilitate implementation of changes in management measures required under the Magnuson-Stevens Act, such as changes in ACLs, ACTs, and AMs. Two of the remaining alternatives to the proposed action were not selected because they could result in a delay in the implementation of necessary changes to the FMP. Such delays would be expected to impede the effective and efficient management of the stock. The final alternative to the proposed action was not adopted because it would have given the Councils and NMFS too much

discretion to change management outside of the plan amendment process.

Five alternatives, including the no-action alternative, were considered for the action to revise the regulations regarding undersized spiny lobsters. The proposed action would allow undersized spiny lobster not exceeding 50 per vessel and 1 per trap aboard each vessel if used in the EEZ exclusively for luring, decoying, or otherwise attracting non-captive spiny lobsters into the trap. The proposed action would be expected to result in an unquantifiable increase in economic benefits to spiny lobster fishermen relative to the status quo. The other alternatives, including the no-action alternative, were not selected because they would not be consistent with Florida regulations and would result in greater restrictions on the possession of undersized spiny lobsters used as attractants. As a result, each of these alternatives would be expected to result in lower economic benefits than the proposed action.

Four alternatives, including the no-action alternative, were considered for the action to modify tailing requirements. Two of the alternatives are included in the proposed action, which would require that all lobsters from the EEZ be landed either all whole or all tailed on a single trip, and require that vessels applying for a Federal tailing permit must have either the requisite Florida permits/licenses for commercial fishing for lobster or a Federal spiny lobster permit. The no-action alternative was not selected because the Federal tailing permit was originally intended to allow tailing by commercial fishermen on long trips but, instead, current regulatory language has allowed recreational fishermen to obtain the permit, contrary to the Councils' original intent. The remaining alternative to the proposed action would prohibit any Federal lobster tail-separation permits and was not selected because it would be expected to result in greater economic losses than the proposed action.

Six alternatives, including the no-action alternative, were considered for the action to designate authority to remove derelict spiny lobster traps in the EEZ off Florida. The no-action alternative was not selected because it would not allow the removal of derelict traps, and would not, therefore, be consistent with the Council's objective to limit the amount of derelict spiny lobster gear in the EEZ off Florida. This proposed rule would authorize the removal of traps in Federal waters off Florida through Florida's trap cleanup program, as provided in existing Florida regulations, and would be expected to have the least economic impact on small entities, based on public comment provided by commercial fishermen. The other alternatives to the proposed action would allow the public to remove derelict traps, or portions thereof, during different portions of the closed season. Assuming such authority only resulted in the removal of derelict traps, and not licensed and appropriate lobster traps, none of the alternatives to the proposed action, other than the no-action alternative, would be expected to adversely affect ongoing activity in the commercial sector during the commercial open season because, by definition, the removed traps would no longer be part of an active business operation. The no-action alternative would also not be expected to affect ongoing commercial activity because derelict trap removal by the public would not be allowed. The proposed action was selected by the Councils to allow the traps to be removed through an existing, coordinated, and well-managed Florida program.

Additional actions and alternatives were considered in the amendment but are not included in this proposed rule because they would either establish management reference points or the preferred action would not result in any regulatory change. These actions and alternatives are discussed in the following paragraphs.

Alternative definitions for maximum sustainable yield, the overfishing threshold, and the overfished threshold and other biological parameters for spiny lobster were considered. The respective alternatives proposed by the Councils are intended to bring the FMP into compliance with requirements of the Magnuson-Stevens Act, and are based on SSC recommendations. Defining these biological parameters for a species does not alter the current harvest or use of the resource. Therefore, no economic impact on small entities would be expected to result from the specification of these management parameters.

Among the alternatives considered by the Councils to establish sector allocations, the no-action alternative was adopted as the proposed action. The other alternatives would specify allocations that would have varying effects determined by the combination of alternatives used to specify allocations, ABC, ACL, OY, and ACT. The result is that some single (stock) or paired-set (sector) ACLs were greater than or less than the respective status-quo landings. Any scenario where allowable landings would be reduced would be expected to result in a reduction in economic benefits to the respective affected sector. The Councils concluded that it was best to manage the spiny lobster fishery without allocations between the recreational and commercial sectors because no mechanism currently exists to track recreational landings and the commercial trip ticket data are not compiled with sufficient speed to support in-season quota monitoring.

Among the alternatives to specify an ABC control rule, the proposed action specifies the Gulf Council's SSC recommended ABC Control Rule. The no-action alternative and two other alternatives (for which the ABC exceeded that recommended by the SSC) would not meet Magnuson-Stevens Act guidance that an ABC control rule be used to set the ABC and that the SSC recommend the ABC to the Council. Each of the other alternatives to the proposed action would specify a lower ABC. Because specifying an ABC control rule is an administrative action, no direct economic effects on any small entities would be expected to result from any of these alternatives. The proposed action was adopted because it would be consistent with decisions made for other species managed by the Councils and would provide a statistically based method of setting ABC, even if a new stock assessment changed the status of the stock. Further, the remaining alternatives, other than the no action alternative, were not adopted because they would not allow for changes to the ABC based on subsequent stock assessments.

Including the no-action alternative, four alternatives were considered for the action to limit spiny lobster fishing to certain areas in the EEZ off Florida to protect threatened staghorn and elkhorn corals. Each of the alternatives to the proposed action would increase the restrictions on where spiny lobster fishing could occur relative to the status quo. As a result, each of these alternatives would be expected to result in adverse economic effects to spiny lobster fishermen relative to the status quo. The no action alternative was adopted as the proposed action in order to allow more public input before taking additional action and this action will be re-addressed in a subsequent amendment to the FMP.

Three alternatives, including the no-action alternative, were considered for the action to require gear markings on all lobster trap lines used in the EEZ off Florida. Each of the alternatives to the proposed action would impose new gear marking requirements and, as a result, each of these alternatives would be expected to result in adverse economic effects to spiny lobster fishermen

relative to the status quo. The no action alternative was adopted as the proposed action in order to allow for more public input before taking additional action and this action will be re-addressed in a subsequent amendment to the FMP.

List of Subjects

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: September 20, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 622 and 640 are proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, the definition for ''Caribbean spiny lobster'' is removed and the definition for ''Caribbean spiny lobster or spiny lobster'' is added in alphabetical order to read as follows.

§ 622.2 Definitions and acronyms.

* * * * *

Caribbean spiny lobster or *spiny lobster* means the species *Panulirus argus,* or a part thereof.

* * * * *

3. In § 622.6, a sentence is added to the end of paragraph (b)(1)(iv) to read as follows:

§ 622.6 Vessel and gear identification.

* * * * *

(b) * * *

(1) * * *

(iv) * * * In the EEZ off Florida, during times other than the authorized fishing season, a Caribbean spiny lobster trap, buoy, or any connecting lines will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code.

* * * * *

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

4. The authority for part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 640.1, the first sentence of paragraph (b) is revised to read as follows:

§ 640.1 Purpose and scope.

* * * * *

(b) This part governs the conservation and management of Caribbean spiny lobster (spiny lobster) in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico.

* * *

* * * * *

6. In § 640.2, the definitions for ''slipper (Spanish) lobster'' and ''spiny lobster'' are removed and the definition for ''Caribbean spiny lobster or spiny lobster'' is added in alphabetical order to read as follows:

§ 640.2 Definitions and acronyms.

* * * * *

Caribbean spiny lobster or *spiny lobster* means the species *Panulirus argus,* or a part thereof.

* * * * *

7. In § 640.4, paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

§ 640.4 Permits and fees.

(a) * * *

(1) * * *

(i) *EEZ off Florida and spiny lobster landed in Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a ''commercial harvester,'' as defined in Rule 68B–24.002, Florida Administrative Code, in effect as of July 1, 2008. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850–488–4676. Copies may be inspected at the Office of the Regional Administrator; the Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

* * * * *

(2) *Tail-separation permits.* For a person to possess aboard a fishing vessel a separated spiny lobster tail in or from the EEZ as defined in § 640.1 (b), a valid Federal tail-separation permit must be issued to the vessel and must be on board. Permitting prerequisites for the tail-separation permit are either a valid Federal vessel permit for spiny lobster or a valid Florida Saltwater Products License with a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement.

* * * * *

8. In § 640.6, paragraphs (a) and (c) are revised to read as follows:

§ 640.6 Vessel and gear identification.

(a) *EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobster by traps in the EEZ off Florida must comply with the vessel and gear identification requirements specified in sections 379.367(2)(a)1. and 379.367(3), Florida Statutes, in effect as of July 1, 2009, and in Rule 68B–24.006(3), (4), and (5), Florida Administrative Code, in effect as of July 1, 2008.

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters in Rule 68B–24.006(6), Florida Administrative Code, in effect as of July 1, 2008.

(3) The incorporation by reference in paragraphs (a)(1) and (a)(2) of this section of sections 379.367(2)(a)1. and 379.367(3), Florida Statutes, Rule 68B–24.006(3), (4), and (5), and (6) Florida Administrative Code, was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850–488–4676. Copies may be inspected at the Office of the Regional Administrator; the Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

* * * * *

(c) *Unmarked traps and buoys.* An unmarked spiny lobster trap or buoy in the EEZ is illegal gear.

(1) *EEZ off Florida.* Such trap or buoy, and any connecting lines, during times other than the authorized fishing season, will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code. An owner of such trap or buoy remains subject to appropriate civil penalties.

(2) *EEZ other than off Florida.* Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties.

9. In § 640.7, paragraph (g) is revised to read as follows:

§ 640.7 Prohibitions.

* * * * *

(g) Fail to return immediately to the water a berried spiny lobster; strip eggs from or otherwise molest a berried spiny lobster; or possess a spiny lobster, or part thereof, from which eggs, swimmerettes, or pleopods have been removed or stripped; as specified in § 640.21(a).

* * * * *

10. In § 640.20, paragraph (b)(3)(iii) is removed, and paragraph (b)(3)(i) is revised and two sentences are added at the end of paragraph (b)(3)(ii) to read as follows:

§ 640.20 Seasons.

* * * * *

(b) * * *

(3) * * *

(i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 68B–24.005(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850–488–4676. Copies may be inspected at the Office of the Regional Administrator; the Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A spiny lobster trap, buoy, or rope in the EEZ off Florida, during periods not authorized in this paragraph will be considered derelict and may be disposed of in accordance with Rules 68B–55.002 and 68B–55.004 of the Florida Administrative Code. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(ii) * * * A spiny lobster trap, buoy, or rope in the EEZ off the Gulf states, other than Florida, during periods not authorized in this paragraph (b)(3) will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

* * * * *

11. In § 640.21, paragraph (a), the second sentence of paragraph (c), and paragraph (d) are revised to read as follows:

§ 640.21 Harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) spiny lobster in or from the EEZ must be returned immediately to the water unharmed. If found in a trap in the EEZ, a berried spiny lobster may not be retained in the trap. A berried spiny lobster in or from the EEZ may not be stripped of its eggs or otherwise molested. The possession of a spiny lobster, or part thereof, in or from the EEZ from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

* * * * *

(c) *Undersized attractants.* * * * No more than fifty undersized spiny lobsters and one per trap aboard the vessel, may be retained aboard for use as attractants. * * *

(d) *Tail separation.* (1) The possession aboard a fishing vessel of a separated spiny lobster tail in or from the EEZ as defined in § 640.1 (b), is authorized only when the possession is incidental to fishing exclusively in the EEZ on a trip of 48 hours or more and a valid Federal tail-separation permit, and either a valid Federal vessel permit for spiny lobster or a valid Florida Saltwater Products License with a valid Florida Restricted Species Endorsement and a valid Crawfish Endorsement, as specified in § 640.4(a)(2), has been issued to and are on board the vessel.

(2) Spiny lobster must be landed either all whole or all tailed on a single fishing trip.

12. In § 640.22, paragraphs (a)(3) and (b)(3)(i) are revised to read as follows:

§ 640.22 Gear and diving restrictions.

(a) * * *

(3) Poisons and explosives may not be used to take a spiny lobster in the EEZ as defined in § 640.1 (b). For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

* * * * *

(b) * * *

(3) * * *

(i) For traps in the EEZ off Florida, by the Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, in accordance with the procedures in Rule 68B–24.006(7), Florida Administrative Code, in effect as of July 1, 2008. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: 850–488–4676. Copies may be inspected at the Office of the Regional Administrator; the Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

* * * * *

13. Section 640.25 is revised to read as follows:

§ 640.25 Adjustment of management measures.

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the Regional Administrator may establish or modify the following items: reporting and monitoring requirements, permitting requirements, bag and possession limits, size limits, vessel trip limits, closed seasons, closed areas, reopening of sectors that have been prematurely closed, annual catch limits (ACLs), annual catch targets (ACTs), quotas, accountability measures (AMs), maximum sustainable yield (or proxy), optimum yield, total allowable catch (TAC), management parameters such as overfished and overfishing definitions, gear restrictions, gear markings and identification, vessel identification requirements, allowable biological catch (ABC) and ABC control rule, rebuilding plans, and restrictions relative to conditions of harvested fish (such as tailing lobster, undersized attractants, and use as bait).

14. Add § 640.28 to subpart B to read as follows:

§ 640.28 Annual catch limits (ACLs) and accountability measures (AMs).

For recreational and commercial spiny lobster landings combined, the ACL is 7.32 million lb (3.32 million kg), whole weight. The ACT is 6.59 million lb, (2.99 million kg) whole weight.

[FR Doc. 2011–24550 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 185

Friday, September 23, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program Prisoner and Death Match Requirements

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for screening SNAP applicants during the certification process using the Prisoner Verification System (PVS) and the Deceased Matching System to determine eligibility. FNS plans to merge these requirements with data collection OMB# 0584–0492, SNAP Repayment Demand and Program Disqualification, once approved by OMB.

DATES: Written comments must be received on or before November 22, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Jane Duffield, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Jane Duffield at 703–305–0928 or via e-mail to *Jane.Duffield@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 822, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Christine Daffan at 703–305–2473.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Nutrition Assistance Program Prisoner and Death Match Requirements.

Form Number: None.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: The Food and Nutrition Service (FNS) published a proposed rule on December 8, 2006 at 71 FR 71075, which would revise the SNAP regulation in 7 CFR part 272 regarding prisoner verification and death matching procedures as mandated by legislation and previously implemented through agency directive.

Section 1003 of the Balanced Budget Act of 1997 (Pub. L. 105–33) amended Section 11(e) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020(e)) to require States to establish systems and take periodic action to ensure that an individual who is detained in a Federal, State, or local penal, correctional, or other detention facility for more than 30 days shall not be eligible to be counted as a household member participating in SNAP. The FNS proposed rule would codify this requirement and define taking periodic action as requiring States to conduct PVS checks at application and re-certification.

This rule also proposes deceased matching requirements enacted by Public Law 105–379 on November 12, 1998. Public Law 105–379, which amended Section 11 of the Food and Nutrition Act (7 U.S.C 2020), required all State agencies to enter into a cooperative arrangement with the Social Security Administration (SSA) to obtain information on individuals who are deceased and use the information to verify and otherwise ensure that benefits are not issued to such individuals. The law went into effect on June 1, 2000. The mandated requirements were implemented by FNS directive to all SNAP State agencies on February 14, 2000. State agencies are responsible for entering into a matching agreement with SSA in order to access information on deceased individuals. FNS proposed adding a new § 272.14 to codify this requirement in regulation and included requirements for accessing the SSA death master file. These proposed requirements included independently verifying the record prior to taking adverse action, and conducting matches for deceased individuals at application and re-certification.

State agencies have been instructed through FNS directive to implement the provisions of the prisoner verification matches (Pub. L. 105–33) and death file matches (Pub. L. 105–379) as required by law in the applicable legislation, and these matches should already be in place without waiting for formal regulations. FNS believes that it is important to standardize matching procedures to provide quality services to all SNAP participants and qualified applicants while ensuring that SNAP benefits are issued only to qualified individuals and households. In doing so, FNS and State agencies contribute to the success and integrity of the Program, garnering public support and user confidence in SNAP.

Affected Public: Individual/Households, State, Local and Tribal Government. There are no recordkeeping requirements for this data collection.

Prisoner Match Reporting Burden

Estimated Number of Respondents: 53.

Estimated Total Number of Responses per Respondent: 304,814.02.

Estimated Total Annual Responses: 16,155,143.00.

Estimated Time per Response: 0.041667.

Estimated Total Annual Reporting Burden: 673,136.343.

Death Match Reporting Burden

Estimated Number of Respondents: 53.

Estimated Total Number of Responses per Respondent: 190,566.04.

Estimated Total Annual Responses: 10,100,000.00.

Estimated Time per Response: 0.041667.

Estimated Total Annual Reporting Burden: 420,836.705.

Grand Total Burden Reporting Burden: 1,093,973.048.

Dated: September 12, 2011.

Audrey Rowe,

Administrator.

[FR Doc. 2011–24411 Filed 9–22–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used by the Alaska Region for Publication of Legal Notices of Proposed Hazardous Fuel Reduction Projects

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that Ranger Districts, Forests, and the Regional Office of the Alaska Region will use to publish legal notices of the opportunity to object to proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act of 2003. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notice of actions subject to the predecisional administrative review process at 36 CFR 218, thereby allowing them to receive constructive notice of the proposed actions, to provide clear evidence of timely notice, and to achieve consistency in administering the predecisional review process.

DATES: Publication of legal notices in the listed newspapers begins on October 1, 2011. This list of newspapers will remain in effect until it is superceded by a new list, published in the **Federal Register**.

ADDRESSES: Robin Dale, Alaska Region Group Leader for Appeals, Litigation and FOIA; Forest Service, Alaska Region; P.O. Box 21628; Juneau, Alaska 99802–1628.

FOR FURTHER INFORMATION CONTACT: Robin Dale; Alaska Region Group Leader for Appeals, Litigation and FOIA; (907) 586–9344.

SUPPLEMENTARY INFORMATION: This notice provides the list of newspapers that Responsible Officials in the Alaska Region will use to give notice of proposed hazardous fuel reduction projects subject to the predecisional administrative review process at 36 CFR 218. The timeframe for objection to a proposed hazardous fuel reduction project subject to this process shall be based on the date of publication of the legal notice of the project in the newspaper of record identified in this notice.

The newspapers to be used for giving notice of Forest Service projects in the Alaska Region are as follows:

Alaska Regional Office

Decisions of the Alaska Regional Forester: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska; and the Anchorage Daily News, published daily in Anchorage, Alaska.

Chugach National Forest

Decisions of the Forest Supervisor and the Glacier and Seward District Rangers: Anchorage Daily News, published daily in Anchorage, Alaska.

Decisions of the Cordova District Ranger: Cordova Times, published weekly in Cordova, Alaska.

Tongass National Forest

Decisions of the Forest Supervisor and the Craig, Ketchikan/Misty, and Thorne Bay District Rangers: Ketchikan Daily News, published daily except Sundays and official holidays in Ketchikan, Alaska.

Decisions of the Admiralty Island National Monument Ranger, the Juneau District Ranger, the Hoonah District Ranger, and the Yakutat District Ranger: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions of the Petersburg District Ranger: Petersburg Pilot, published weekly in Petersburg, Alaska.

Decisions of the Sitka District Ranger: Daily Sitka Sentinel, published daily except Saturday, Sunday, and official holidays in Sitka, Alaska.

Decisions of the Wrangell District Ranger: Wrangell Sentinel, published weekly in Wrangell, Alaska.

Supplemental notices may be published in any newspaper, but the timeframes for filing objections will be calculated based upon the date that legal notices are published in the newspapers of record listed in this notice.

Dated: September 9, 2011.

Beth G. Pendleton,

Regional Forester.

[FR Doc. 2011–24295 Filed 9–22–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Commercial Fishing Vessel Cost and Earnings Data Collection Survey in the Northeast Region.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (new information collection).

Number of Respondents: 1,280.

Average Hours per Response: 1.

Burden Hours: 1,280.

Needs and Uses: This request is for a new information collection.

Economic data on the costs of operating commercial fishing businesses are needed by the National Marine Fisheries Service (NMFS) to meet the legislative requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, Executive Order 12866 and the Regulatory Flexibility Act. The Social Sciences Branch (SSB) of the NMFS, Northeast Fisheries Science Center (NEFSC) is responsible for estimating the economic and social impacts of fishery management actions.

Lack of information on vessel operating costs has severely limited the ability of the SSB to assess fishermen's behavioral responses to changes in regulations, fishing conditions, and market conditions. Establishing an on-going, consistent, data collection program will enable the SSB to provide a level of analysis that meets the needs of the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council and NMFS, on behalf of the Secretary of Commerce, to make informed decisions about the expected economic effects of proposed management alternatives.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: September 19, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–24435 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address ways in which the national economic accounts can be presented more effectively for current economic analysis and recent statistical developments in national accounting.

DATES: Friday, November 4, 2011, the meeting will begin at 9 a.m. and adjourn at 3:30 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis at 1441 L St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9633.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Gianna Marrone of BEA at (202) 606–9633 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at (202) 606–9633.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's twenty-third meeting.

Dated: September 13, 2011.

Brian C. Moyer,

Deputy Director, Bureau of Economic Analysis.

[FR Doc. 2011–24497 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Extension of Time for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 23, 2011.

FOR FURTHER INFORMATION CONTACT: Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6231.

Background

On June 8, 2011, the Department of Commerce (''the Department'') published the preliminary results of this administrative review for the period May 1, 2009, to April 30, 2010. *See Pure Magnesium from the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review,* 76 FR 33194 (June 8, 2011). The final results of review are currently due on October 6, 2011.

Extension of Time Limits for the Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. The Department determines that completion of the final results of the administrative review within the 120-day period is not practicable. Since the publication of the *Preliminary Results,* parties have submitted additional surrogate value information, the Department released its labor wage surrogate value data and allowed parties to submit comments thereon, and the parties submitted case and rebuttal briefs. The Department requires additional time to consider this information and argument. Further, the Department provided the opportunity for the parties to be heard at a hearing.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the final results of the administrative review by 45 days, or until November 21, 2011,[1] in accordance with section 751(a)(3)(A) of the Act.

We are publishing this notice pursuant to sections 751(a) and 777(i) of the Act.

Dated: September 16, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–24557 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Final Results of the Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 23, 2011.

[1] Where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, because 45 days from the original due date is November 20, 2011, which falls on Sunday, November 21 is the deadline for the final results.

FOR FURTHER INFORMATION CONTACT: Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5403.

Background

On June 30, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the *Preliminary Results* of the antidumping duty changed circumstances review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China. *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results and Preliminary Intent To Terminate, in Part, Antidumping Duty Changed Circumstances Review and Extension of Time Limit for Final Results,* 76 FR 38357 (June 30, 2011) (''*Preliminary Results''*). Subsequent to the publication of the *Preliminary Results,* the Department received affirmative and rebuttal comments regarding the Department's preliminary determination. On July 25, 2011, the Department held a hearing in which interested parties presented arguments from their affirmative and rebuttal comments. On August 15, 2011, the Department published a notice in the **Federal Register** that extended the time limit to issue the final results by 30 days, making the current deadline September 19, 2011. *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Final Results of the Antidumping Duty Changed Circumstances Review,* 76 FR 50455 (August 15, 2011).

Extension of Time Limit for the Final Results

The Department finds that it is not practicable to complete this review by the current deadline. The Department has determined that it requires additional time to analyze the case and rebuttal briefs submitted by interested parties. Consequently, in accordance with 19 CFR 351.302(b), the Department is extending the time period for issuing the final results in this review by 15 days. Therefore, the final results will be due no later than October 4, 2011.

We are issuing and publishing this notice in accordance with sections 751(b) and 771(i) of the Tariff Act of 1930, as amended.

Dated: September 19, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–24559 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing an Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 26, 2011, from 8 a.m. until 5 p.m., Thursday, October 27, 2011, from 8:30 a.m. until 5 p.m., and Friday, October 28, 2011 from 8 a.m. until 12 p.m. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, October 26, 2011, from 8 a.m. until 5 p.m. eastern time, Thursday, October 27, 2011, from 8:30 a.m. until 5 p.m. eastern time, and Friday, October 28, 2011 from 8 a.m. until 12 p.m. eastern time.

ADDRESSES: The meeting will take place in the Courtyard Washington Embassy Row, 1600 Rhode Island Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Annie Sokol, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2006.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 26, 2011, from 8 a.m. until 5 p.m., Thursday, October 27, 2011, from 8:30 a.m. until 5 p.m., and Friday, October 28, 2011 from 8 a.m. until 12 p.m. All sessions will be open to the public. The ISPAB was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

The agenda is expected to include the following items:

—Presentation on NIST Special Publication 800–53, Appendix on Privacy,
—Presentation from U.S. Department of Homeland Security (DHS) on DHS and Department of Defense (DoD) strategy for cyberspace,
—Presentation on Doctrine of Cybersecurity relating to computer security research,
—Presentation from National Protection and Programs Directorate, DHS, on the white paper, ''Enabling Distributed Security in Cyberspace'',
—Discussion with Cybersecurity Coordinator and Special Assistant to the President,
—Presentation on Security Automation and key focus areas,
—Presentations on policies relating to national border database (National Vulnerability Database),
—Presentation/discussion on telecommunication, Federal Communications Commission (FCC) and technology,
—Discussion/updates on the National Strategy for Trusted Identities in Cyberspace (NSTIC),
—Panel discussion on recommended framework beyond FISMA 3.0—baseline and sectoral variation,
—Presentation/Discussion on Cyber Awareness Month,
—Discussion on cybersecurity with Senior Defense and Intelligence Advisor,
—Discussion with OMB with emphasis on information security,
—Discussion/Update on FedRAMP,
—Presentation on Privacy and Consumers,
—Panel discussion on Data and Country of Origin in cloud computing, and
—Update of NIST Computer Security Division.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, October 28, 2011, between 8:15 a.m. and 8:45 a.m.). Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact Ms. Annie Sokol at the telephone number indicated above.

In addition, written statements are invited and may be submitted to the ISPAB at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology

Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Approximately fifteen seats will be available for the public and media.

Dated: September 12, 2011.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2011–24529 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 110620345–1581–02]

Extension of the Due Date for Submitting Information on How to Structure Proposed New Program: Advanced Manufacturing Technology Consortia (AMTech)

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Request for information.

SUMMARY: On July 22, 2011, NIST published a Request for Information in the **Federal Register** inviting interested parties to submit written comments on how to best structure a potential new public-private partnership program, the Advanced Manufacturing Technology Consortia (AMTech) Program, which was proposed in the NIST fiscal year (FY) 2012 budget. NIST is publishing this notice to extend the deadline for the submission of comments pertaining to the proposed AMTech Program until 11:59 p.m., Eastern Time, on Thursday, October 20, 2011. No other changes are being made to the originally published Request for Information.

DATES: Comments are due on or before 11:59 p.m., Eastern Time, on Thursday, October 20, 2011. Comments received between September 20, 2011 and the publication date of this notice are deemed to be timely.

ADDRESSES: Comments will be accepted by e-mail only. Comments must be sent to *AMTechRFC@nist.gov* with the subject line ''AMTech Comments.''

FOR FURTHER INFORMATION CONTACT: Barbara Lambis, 301–975–4447, *barbara.lambis@nist.gov,* or Michael D. Walsh, 301–975–5455, *michael.walsh@nist.gov.*

SUPPLEMENTARY INFORMATION: The Advanced Manufacturing Technology Consortia (AMTech) Program was proposed in the NIST FY 2012 budget (*see http://www.osec.doc.gov/bmi/budget/12CJ/2012_NIST_&_NTIS_Cong_Budget.pdf* (pp. NIST–250 to NIST–254) for a copy of the AMTech Program budget justification). As envisioned, the AMTech Program would provide Federal financial assistance to leverage existing or newly created industry-led consortia to develop precompetitive enabling manufacturing technologies. These consortia would develop roadmaps of critical long-term industrial manufacturing research needs, and issue sub-awards to fund research by universities, government laboratories, and U.S. businesses. This initiative would support research and development (R&D) in advanced manufacturing, with the goal of strengthening long-term U.S. leadership in the development of critical technologies that lead to sustainable economic growth and job creation.

On July 22, 2011, NIST published a Request for Information in the **Federal Register** (76 FR 43983, *http://www.gpo.gov/fdsys/pkg/FR-2011-07-22/pdf/2011-18580.pdf*) inviting interested parties to provide written comments on how to best structure the proposed AMTech Program for which has not yet received FY 2012 appropriations. The due date for the submission of comments as set forth in the original Request for Information was 11:59 p.m., Eastern Time, on Tuesday, September 20, 2011. By way of this notice, NIST is extending the due date for the submission of comments until 11:59 p.m., Eastern Time, on Thursday, October 20, 2011, in order to provide interested parties additional time to submit their comments pertaining to the proposed AMTech Program. Comments received between 11:59 p.m., Eastern Time, on Tuesday, September 20, 2011, and the publication of this notice in the **Federal Register** are deemed to be timely. No other changes are being made to the originally published Request for Information.

Dated: September 20, 2011.

Phillip Singerman,

Associate Director for Innovation and Industry Services, National Institute of Standards and Technology.

[FR Doc. 2011–24538 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 22, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275 or *Walter.Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Fishermen in federally-managed fisheries in the western Pacific region are required to provide certain information about their fishing activities, catch, and interactions with protected species by submitting reports to National Marine Fisheries Service (NMFS), per 50 CFR part 665. These data are needed to determine the condition of the stocks and whether the current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to accidental takes of endangered and threatened species, including seabirds, sea turtles, and marine mammals.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic

forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0214.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations; individuals, or households.

Estimated Number of Respondents: 345.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 6,231.

Estimated Total Annual Cost to Public: $5,048 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 19, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–24436 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Representative and Address Provisions.

Form Number(s): PTO/SB/80/81/81A/81B/81C/83/84, PTO/SB/122/123/123A/123B/124/125, and PTO–2248.

Agency Approval Number: 0651–0035.

Type of Request: Revision of a currently approved collection.

Burden: 33,867 hours annually.

Number of Respondents: 592,315 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 3 minutes (0.05 hours) to 1.5 hours to submit the information in this collection, including the time to gather the necessary information, prepare the appropriate form or document, and submit the completed request to the USPTO.

Needs and Uses: Under 35 U.S.C. 2 and 37 CFR 1.31–1.36, the public uses this information collection to grant or revoke power of attorney, to withdraw as attorney or agent of record, to authorize a practitioner to act in a representative capacity, to change a correspondence address, to request a Customer Number, and to change the data associated with a Customer Number. The USPTO's Customer Number practice permits authorized individuals to change the correspondence address or representatives of record for a number of applications, patents, or reexamination proceedings with one change request instead of filing separate requests for each application, patent, or reexamination proceeding. The USPTO uses the information in this collection to determine who is authorized to take action in an application, patent, or reexamination proceeding and where to send correspondence regarding an application, patent, or reexamination proceeding.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, *e-mail: Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include ''0651–0035 copy request'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 24, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: September 20, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–24506 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–T–2011–0050]

Request for Comments on Establishment of a One-Year Retention Period for Trademark-Related Papers That Have Been Scanned Into the Trademark Initial Capture Registration System

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') is considering establishing a retention period of one year for trademark-related documents submitted on paper that are subsequently scanned into the Trademark Initial Capture Registration System (''TICRS''). TICRS is available to the public through the Trademark Document Retrieval (''TDR'') database on the USPTO Web site. After the expiration of the one-year retention period, the USPTO would dispose of the paper documents unless, within sufficient time prior to disposal, the relevant trademark applicant or owner files a request to correct the electronic record in TICRS, and the request remains outstanding at the time disposal would otherwise have occurred. Specifically, the proposed one-year retention period begins on: September 26, 2011, for papers scanned into TICRS prior to September 26, 2011; or a paper's submission date, for papers scanned into TICRS on or after September 26, 2011. The proposal would reduce the costs currently associated with indefinitely warehousing paper documents, while permitting sufficient time for the review and rarely needed correction of the scanning of such paper documents.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before *November 22, 2011.*

ADDRESSES: The USPTO prefers that any comments be submitted via electronic mail message to *TMFRNotices@uspto.gov.* Written comments may also be submitted by mail addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, Attention Cynthia C. Lynch; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building—East Wing, 600 Dulany Street, Alexandria, Virginia, Attention Cynthia C. Lynch.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272–8742, or by mail addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, marked to the attention of Cynthia C. Lynch. The comments will be available for public inspection on the USPTO's Web site at *http://www.uspto.gov*, and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Because comments will be available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

SUPPLEMENTARY INFORMATION: TICRS is the USPTO's database for electronically capturing, storing, and retrieving all trademark application image files and most registration image files. The USPTO is nearing completion of a multi-year project to scan into TICRS all paper documents for every active registered mark. The data in TICRS is available to the public through the Trademark Document Retrieval (''TDR'') database on the USPTO Web site. The public can also view the data in TICRS at the USPTO's Public Search Facility in Alexandria, Virginia.

The majority of trademark applications, and subsequent correspondence concerning the application, are filed electronically using the Trademark Electronic Application System (''TEAS'') and the file images are stored in TICRS. To date in Fiscal Year 2011, almost 99% of applications were filed electronically, and over 72% of applications were processed and disposed of electronically. Thus far in fiscal year 2011, approximately 3,897 new applications were filed on paper, and other paper submissions (i.e., correspondence, post registration maintenance documents, *etc.*) accounted for approximately 33,482 additional documents. Upon receipt, the USPTO scans all paper documents and stores the documents electronically in TICRS. Currently, the USPTO also retains the paper documents after scanning them, even though the paper documents duplicate the electronic record in TICRS. While not actively or routinely used, the paper records are available for comparison purposes in the rare situation where an issue might arise concerning the accuracy of the electronic records in TICRS.

The USPTO invests heavily in its electronic systems and conducts multiple reviews of the electronic records in TICRS to ensure accuracy of the data. After a paper application is scanned, personnel in the Pre-Examination section of the USPTO review the application record in TICRS and request scanning corrections, as needed. The record in TICRS is reviewed again when the application is assigned to a trademark examining attorney who may determine, as part of the application review, that additional scanning corrections are necessary. Further review of the record is conducted by the Post Registration section of the USPTO when registration maintenance documents are filed. In the first 41 weeks of fiscal year 2011, the USPTO processed only 100 internal requests for the rescanning of paper documents. Relative to the number of paper submissions, the number of requested scanning corrections is extremely small.

Currently, paper documents that have been scanned into TICRS are boxed and sent to a warehouse for storage. The USPTO incurs warehouse storage costs to maintain the paper records. The USPTO anticipates that these costs will rise if paper records continue to be stored. Additionally, the USPTO's warehouse storage space is projected to reach its capacity by mid-year 2012, and additional warehouse storage space would be necessary, further increasing the costs.

To address these costs while still allowing sufficient time for the review and rarely needed correction of the scanning of paper documents, the USPTO proposes establishing a definite period of time for the retention of paper records. Specifically, the proposed one-year retention period begins on: September 26, 2011, for papers scanned into TICRS prior to September 26, 2011; or a paper's submission date, for papers scanned into TICRS on or after September 26, 2011. This plan will allow the USPTO and the public sufficient time to review and determine the accuracy of the record in TICRS/TDR and request any needed corrections, thereby providing assurance that the record is correct. The plan will also significantly reduce the costs currently associated with indefinitely warehousing duplicative paper records. Therefore, the USPTO proposes establishing a one-year retention period for paper documents for which an electronic record has been created in TICRS/TDR. Paper filings with electronic and digital media attachments would not be subject to the one-year retention period and will remain retrievable, consistent with past practice.

After the expiration of the one-year retention period, the USPTO proposes to dispose of the paper records, unless a request to correct the electronic record in TICRS remains outstanding. Requests to correct the electronic records in TICRS should be e-mailed to ''*TM-TDR-Correct@uspto.gov*'' using the subject line ''Electronic Record Correction'' at least one month prior to the expiration of the one-year retention period to allow sufficient time to process the request. The request should include: (1) The serial number or registration number; (2) the date and nature of the paper document filed; (3) a description of the error(s) in TICRS/TDR; (4) the name and telephone number of the applicant or owner; and (5) a replacement copy of the paper document, if available. Under the plan, the USPTO will review the request and update the record within 21 days of receipt, if appropriate. Thus, the applicant or owner may check TICRS or TDR approximately three weeks after submitting the request to verify entry of the requested changes.

Dated: September 19, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–24466 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2011–0049]

Notice of Availability of Patent Fee Changes Under the Leahy-Smith America Invents Act

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of availability.

SUMMARY: The United States Patent and Trademark Office (USPTO) is

publishing this notice to advise the public of the availability, on the USPTO's Web site, of the patent fee amounts that will be in effect ten days after the date of enactment of the Leahy-Smith America Invents Act (*i.e.,* September 26, 2011) by operation of the fifteen percent surcharge provided for in section 11(i) and the prioritized examination fee provided for in Section 11(h). The USPTO's Web site also specifies the additional fee for applications not filed by electronic means in effect sixty days after the date of enactment of the Leahy-Smith America Invents Act (*i.e.,* November 15, 2011) by operation of section 10(h). The USPTO's Web site for fee information is *http://www.uspto.gov/about/offices/cfo/finance/fees.jsp.*

FOR FURTHER INFORMATION CONTACT: By telephone to James J. Engel, at (571) 272–7725, or Susy Tsang-Foster, at 571–272–7711; or by mail addressed to: United States Patent and Trademark Office, Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of James J. Engel or Susy Tsang-Foster.

Authority: Pub. L. 112–29.

SUPPLEMENTARY INFORMATION: Sections 11(a) through (e) of the Leahy-Smith America Invents Act generally codify the patent fee provisions of the fiscal year 2005 Consolidated Appropriations Act (Pub. L. 108–447), with the patent fee amounts in effect on the date of enactment of the Leahy-Smith America Invents Act. Sections 11(a) through (e) of the Leahy-Smith America Invents Act also delete provisions pertaining to applicant-provided search reports and search reports acquired from a qualified search authority, and reorganize a few of the patent fee provisions of the fiscal year 2005 Consolidated Appropriations Act. The Leahy-Smith America Invents Act includes the following additional changes to patent fees:

First, section 11(i) of the Leahy-Smith America Invents Act provides that there shall be a surcharge of 15 percent, rounded by standard arithmetic rules, on all fees charged or authorized by 35 U.S.C. 41(a), (b) and (d)(1), as well as by 35 U.S.C. 132(b). Section 11(i) also provides that this 15 percent surcharge is effective ten days after the date of enactment of the Leahy-Smith America Invents Act (*i.e.,* September 26, 2011).

Second, section 11(h) of the Leahy-Smith America Invents Act includes provisions for prioritized examination, which include a fee of $4,800 ($2,400 for small entities). Section 11(h) also provides that the prioritized examination provisions are effective ten days after the date of enactment of the Leahy-Smith America Invents Act (*i.e.,* September 26, 2011).

Third, section 10(h) of the Leahy-Smith America Invents Act provides that an additional fee of $400 shall be established for each application for an original (*i.e.,* non-reissue) patent, except for a design, plant, or provisional application, that is not filed by electronic means as prescribed by the Director of the United States Patent and Trademark Office (USPTO). Section 10(h) also provides that this fee is reduced by 50 percent for small entities under 35 U.S.C. 41(h)(1). Additionally, section 10(h) provides that this new fee is effective sixty days after the date of enactment of the Leahy-Smith America Invents Act (*i.e.,* November 15, 2011).

The USPTO is publishing this notice to advise the public of the availability, on the USPTO's Web site, of the patent fee amounts that will be in effect ten days after the date of enactment of the Leahy-Smith America Invents Act by operation of the fifteen percent surcharge provided for in section 11(i) and the prioritized examination fee provided for in Section 11(h). The USPTO's Web site also specifies the additional fee for applications not filed by electronic means in effect sixty days after the date of enactment of the Leahy-Smith America Invents Act by operation of section 10(h). The USPTO's Web site for fee information is *http://www.uspto.gov/about/offices/cfo/finance/fees.jsp.*

The fees for the new programs provided for in the Leahy-Smith America Invents Act (*e.g.,* post-grant review, *inter partes* review, supplemental examination) and other fee changes authorized by the Leahy-Smith America Invents Act will be implemented in separate rule makings. The prioritized examination provisions of section 11(h) of the Leahy-Smith America Invents Act will be implemented in a separate final rule making.

Dated: September 21, 2011.

Deborah S. Cohn,

Commissioner for Trademarks.

[FR Doc. 2011–24672 Filed 9–22–11; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 10/24/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, *Fax:* (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/10/2011 (76 FR 34064–34065) and 7/22/2011 (76 FR 43990–43991), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: AF110—Shirt, Class A/Primary Duty, USAF, Men's, Long Sleeve, Dark Navy Blue, Numerous Sizes.
NSN: AF111—Shirt, Class A/Primary Duty, USAF, Women's, Long Sleeve, Dark Navy Blue, Numerous Sizes.
NSN: AF120—Shirt, Class A/Primary Duty, USAF, Men's, Short Sleeve, Dark Navy Blue, Numerous Sizes.
NSN: AF121—Shirt, Class A/Primary Duty, USAF, Women's Short Sleeve, Dark Navy Blue, Numerous Sizes.
NSN: AF130—Pants, Class A/Primary Duty, USAF, Men's, Flex Waist, Dark Navy Blue, Numerous Sizes
NSN: AF131—Pants, Class A/Primary Duty, USAF, Women's, Flex Waist, Dark Navy Blue, Numerous Sizes.
NSN: AF140—Ballcap, Standard, USAF, Unisex, Dark Navy Blue, M/L; L/XL.
NSN: AF150—Hat, Formal, USAF, Unisex, Dark Navy Blue, S; M; L; XL.
NSN: AF210—Shirt, Class B/Utility, USAF, Long Sleeve, Unisex, Dark Navy Blue, Numerous Sizes.
NSN: AF220—Shirt, Class B/Utility, USAF, Short Sleeve, Unisex, Dark Navy Blue, Numerous Sizes.
NSN: AF230—Trousers, class B/Utility, USAF, Unisex, Dark Navy Blue, Numerous Sizes
NSN: AF310—Jacket, USAF, 3/4 Length, Unisex, Dark Navy Blue, Numerous Sizes.
NSN: AF320—Pants, USAF, Unisex, Rain, Dark Navy Blue, Numerous Sizes.
NSN: AF330—Jacket, USAF, Waist Length, Unisex, Dark Navy Blue, Numerous Sizes.
NSN: AF340—Turtleneck, USAF, Unisex, Dark Navy Blue, Numerous Sizes.
NSN: AF350—Fleece Liner, USAF, Unisex, Dark Navy Blue, Liner for Jacket, Numerous Sizes.
NSN: AF360—Cap USAF, Unisex, Weather Watch, Dark Navy Blue, One Size Fits All.
NSN: AF370—Parka, USAF, Unisex, Cold Weather, Dark Navy Blue, Numerous Sizes.
NSN: AF380—Over Pants, USAF, Unisex, Cold Weather, Dark Navy Blue, Numerous Sizes.
NSN: AF390—Coveralls/Jumpsuit, USAF, Unisex, Lightweight, Dark Navy Blue, Numerous Sizes.
NSN: AF411A—Belt, Class A/Primary Duty, USAF, Unisex, Black Leather, Numerous Sizes.
NSN: AF412B—Belt, Class B/Primary Duty, USAF, Unisex, Black Leather, Numerous Sizes.
NSN: AF420—Nameplate, Class A, USAF, Metal, Polished Nickel Finish with black Lettering.
NSN: AF430—Nameplate, Class B, USAF, Cloth, Dark Navy Blue with Silver/Gray Thread Lettering.
NSN: AF9410—Necktie Bar Clasp, USAF, Metal, Polished Nickel Finish.
NSN: AF9410P—Patch, ''Police'', USAF, Half Size, 3″x 2″.
NSN: AF9411—Patch, USAF, Longevity Stripe, Blue and Gold.
NSN: AF9412—Badge, ''Police'', USAF, Nickel Finish, 3″x2 ″.
NSN: AF9413G—Patch, ''Guard'', USAF, Full Size, 4″x 5/8″.
NSN: AF9413P—Patch, ''Police'', USAF, Full Size, 4″x 5/8″.
NSN: AF9414G—Patch, ''Guard'', USAF, Half Size, 3″x 2″.
NSN: AF9415—Hat Badge, Formal, USAF, Nickel Finish.
NSN: AF9440—Badge, USAF, ''DEPUTY CHIEF'', Metallic Polished Nickel Finish, 1″x 7/8″.
NSN: AF9450—Badge, USAF, ''ASSISTANT TO THE OPERATIONS OFFICER'', Metallic Polished Nickel Finish, 1″x 7/8″.
NSN: AF9460—Badge, USAF, ''SHIFT SUPERVISOR'', Metallic Polished Nickel Finish, 1″x 7/8″.
NSN: AF9470—Badge, USAF, ''TRAINING SUPERVISOR'', Metallic Polished Nickel Finish, 1″x 7/8″.
NSN: AF9482—Insignia, USAF, Collar Chevrons Officer (2 stripes), USAF, Metallic Silver or Polished Nickel Finish.
NSN: AF9483—Insignia, USAF, Collar Chevrons Officer (3 Stripes), USAF Metallic Silver or Polished Nickel Finish.
NSN: AF9490—Necktie, USAF, Unisex, Dark Navy Blue.
NPA: Human Technologies Corporation, Utica, NY.
Contracting Activity: Air Force Material Command, Wright Patterson AFB, OH.
Coverage: C–List for 100% of the requirement of the U.S. Air Force as aggregated by the Air Force Material Command, Wright Patterson AFB, OH.

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) operates pursuant to statutory and regulatory requirements. The Committee regulation at 41 CFR 51–2–4 states that for a commodity or service to be suitable for addition to the Procurement List each of the following criteria must be reviewed and determined satisfactory under Committee practice and procedure: Employment potential; nonprofit agency qualifications, capability, and level of impact on the current contractor for the commodity or service. The Javits-Wagner-O'Day (JWOD) Act requires that projects added to the Procurement List must be provided by qualified nonprofit agencies that employ people who are blind or severely disabled for not less than 75% of the direct hours required for the production or provision of products or services during each fiscal year.

Comments were received from a commercial contractor that produces headwear, requesting that one of the proposed items not be added to the Procurement List. The contractor has not in the past, and does not currently, produce the particular item for the government; however, the contractor wants the opportunity to do so in the future. The contractor also implies that the AbilityOne Program has previously impacted his company.

The requirement considered by the Committee has not been previously purchased by the contracting activity. Moreover, the contracting activity has specifically requested that the AbilityOne Program perform the consolidated effort of providing the products and services identified in the Procurement List addition. Consequently, there is no expectation that the contracting activity desires to individually source particular products, nor is there any assurance this contractor would be selected to provide such products. Since this contractor does not currently provide any of the products or services identified in this addition, there can be no claim of adverse impact due to this addition. Therefore, pursuant to its statutory responsibility, the Committee has determined the products and services are suitable for procurement by the government and can be provided by qualified nonprofit agencies employing people who are blind or who have other severe disabilities.

NSN: 8970–01–576–1950—Kit, Remote Feeding and Cleaning.
NPA: NewView Oklahoma, Inc., Oklahoma City, OK.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.
Coverage: C–List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Services

Service Type/Location: Package Reclamation, DLA–Wide, Defense Distribution Center, Tinker AFB, Oklahoma City, OK.
NPA: NewView Oklahoma, Inc., Oklahoma City, OK.
Contracting Activity: Defense Logistics Agency, DLA Distribution, New Cumberland, PA.
Service Type/Location: Peel & Stick Program Support, U.S. Coast Guard-Wide, 1750 Claiborne Avenue, Shreveport, LA.
NPA: Louisiana Association for the Blind, Shreveport, LA.
Contracting Activity: Deptartment of Homeland Security, U.S. Coast Guard, Lockport, LA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–24463 Filed 9–22–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received On or Before:* 10/24/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: M.R. 829—Meat Hammer, Tenderizing.
NPA: Cincinnati Association for the Blind, Cincinnati, OH.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

NSN: M.R. 1018—Scrubber, Non Scratch, Tub and Shower.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Services

Service Types/Locations: Organizational Clothing and Individual Equipment (OCIE), Refurbishment and Warehousing, OCIE West Region.

Note: This service is proposed to be provided from the Travis Association for the Blind's location at 4509 Freidrich Lane, Austin, TX.

NPA: Travis Association for the Blind, Austin, TX.
Contracting Activity: US Army Contracting Command—Warren, Warren, MI.
Service Types/Locations: Organizational Clothing and Individual Equipment (OCIE), Refurbishment and Warehousing, OCIE North East Region.

Note: This service is proposed to be provided from Peckham Vocational Industries' location at 3510 Capital City Blvd., Lansing, MI.

NPA: Peckham Vocational Industries, Inc., Lansing, MI.
Contracting Activity: US Army Contracting Command—Warren, Warren, MI.

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2011–24462 Filed 9–22–11; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday October 28, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.

[FR Doc. 2011–24650 Filed 9–21–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday October 21, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.

[FR Doc. 2011–24652 Filed 9–21–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday, October 14, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–24655 Filed 9–21–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Friday October 7, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–24654 Filed 9–21–11; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, September 28, 2011, 8:30 a.m.–12 p.m. and 1 p.m.–3:30 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting–Open to the Public.

Matters To Be Considered

Decisional Matter: Unblockable Drains (8:30 a.m.–10:30 a.m.)

Briefing Matters: (Staff Presentations from 10:30 a.m.–12 p.m. and Commission Q&A from 1 p.m.–3:30 p.m.)

(1) Testing & Certification/Components Parts Final Rule;

(2) Representative—Notice of Proposed Rulemaking;

(3) **Federal Register** Notice on HR2715 Questions.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 20, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–24545 Filed 9–21–11; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 76, No. 179, Thursday September 15, 2011, page 57025.

ANNOUNCED TIME AND DATES OF OPEN MEETING: 9 a.m.–12 p.m., Wednesday, September 21, 2011.

CHANGES TO OPEN MEETING: Time change to 10 a.m.–11 a.m.

REVISED AGENDA: Matters To Be Considered: Briefing Matter: Table Saws—Advance Notice of Proposed Rulemaking. (The Decisional Matter: Unblockable Drains, has been deferred to a later meeting.)

ANNOUNCED TIME AND DATE OF CLOSED MEETING: 2–3 p.m., Wednesday, September 21, 2011.

CLOSED MEETING CANCELLED. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 20, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–24546 Filed 9–21–11; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Interim Change to the Military Freight Traffic Unified Rules Publication (MFTURP) No. 1

AGENCY: Department of the Army, DoD.

SUMMARY: The Military Surface Deployment and Distribution Command (SDDC) is providing notice that it has released an interim change to the MFTURP No. 1. The interim change updates Section A.II.D.6 to align the safety requirements for transportation protective service (TPS) carriers with the Department of Transportation's (DOT) Federal Motor Carrier Safety Administration (FMCSA) scoring system.

ADDRESSES: Submit comments to Publication and Rules Manager, Strategic Business Directorate, Business Services, 1 Soldier Way, Building 1900W, ATTN: SDDC–OPM, Scott AFB, 62225. Request for additional information may be sent by e-mail to: *chad.t.privett@us.army.mil* or *george.alie@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Chad Privett, (618) 220–6901, or Mr. George Alie, (618) 220–5870.

SUPPLEMENTARY INFORMATION:

Reference: Military Freight Traffic Unified Rules Publications (MFTURP) No. 1.

Background: The MFTURP No. 1 governs the purchase of surface freight transportation in the Continental United States (CONUS) by DoD using Federal Acquisition Regulation (FAR) exempt transportation service contracts.

Miscellaneous: This publication, as well as the other SDDC publications, can be accessed via the SDDC Web site at: *http://www.sddc.army.mil/GCD/default.aspx.*

Dated: September 14, 2011.

Evert Bono,

Chief, SDDC–G9,Special Requirements.

[FR Doc. 2011–24492 Filed 9–22–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Draft Environmental Impact Statement/Environmental Impact Report for Proposed Marine Terminal Development at Pier S and Back Channel Navigational Safety Improvements in the Port of Long Beach, Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Division), in coordination with the Port of Long Beach, has

completed a Draft Environmental Impact Statement/Environmental Impact Report (DEIS/DEIR) for the Pier S Marine Terminal and Back Channel Improvement Project, encompassing approximately 210 acres of land and water. The development of Pier S and Back Channel improvements would result in an approximately 160-acre marine container terminal, and would include the following elements: Property acquisition; dredging, wharf construction, other waterside improvements, and container cranes; container yard and associated structures; terminal buildings and other structures; truck gates, associated structures, and roadwork; intermodal rail yard, structures, and dual rail lead; and utility and oil facility relocation. Construction duration is estimated at 22 months.

The Port of Long Beach requires authorization pursuant to Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act, to implement various regulated activities in and over waters of the U.S. associated with developing Pier S. Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the preparation of an Environmental Impact Report (EIR) for its consideration of development approvals within its jurisdiction. The Corps and the Port have agreed to jointly prepare a DEIS/DEIR in order to optimize efficiency and avoid duplication. The DEIS/DEIR is intended to be sufficient in scope to address federal, state, and local requirements and environmental issues concerning the proposed activities and permit approvals.

SUPPLEMENTARY INFORMATION:

1. Project Site and Background Information

The 160-acre Pier S site is located in the Port of Long Beach, in the Northwest, Northeast, and Middle Harbor Planning Districts. The site is bounded on the north by Cerritos Channel and Piers A and B (Stevedoring Services of America (SSA) and Toyota Motor Sales) ; on the east by Piers C and D; on the south by Southern California Edison (SCE) property, the Long Beach Generating Station, Ocean Boulevard and Pier T (BP Pipelines North American, Pacific Coast Recycling, Total Terminals International, and Weyerhaeuser Company; and on the west by State Route 47 (SR–47), the Vopak Terminal, and the Southeast Resource Recovery Facility (SERRF). The Back Channel is located east of the Pier S site. It is bounded on the north by the Inner Harbor Turning Basin and Pier A Terminal; on the east by Pier D; on the south by Middle Harbor; and on the west by Pier T. Currently, 63 acres of the total 160-acre terminal is paved with asphaltic concrete, and no marine terminal operations occur at Pier S.

The Pier S site is part of a 720-acre parcel sold by Union Pacific Resources Corporation (UPRC) to the Port in 1994. The site was formerly used as an active oil and gas production field from the 1930s until 1999. From 1951 to 1969, a portion of the site was leased by UPRC to TCL Corporation for the disposal of oil and gas drilling waste in shallow impoundments or ''sumps.''

In March 1999, the Port of Long Beach Board of Harbor Commissioners approved a project to develop a marine container terminal on Pier S and certified the Pier S Marine Terminal EIR and Application Summary Report. Project components included relocation of oil facilities and utilities, site remediation, site preparation, dike realignment, wharf construction, and construction of other related terminal facilities. Site remediation was completed in December 2000. In July 2000, a safety issue was raised concerning the ability to move a ship safely in the Cerritos Channel while other ships were berthed at both Pier S and Pier A, across the channel. It was recommended that a minimum of 200 feet of total clearance be established in the channel (100 feet on each side of a maneuvering ship) to allow adequate clearance for the cranes on the wharf. In 2000, an Addendum to the Final EIR for the Pier S Marine Terminal was completed. The Addendum analyzed the proposed project modifications that would reduce impacts to navigational safety by widening the channel by 108 feet, bringing the total channel width to 808 feet. No significant new environmental impacts were identified in the Addendum EIR.

Since that time, however, the configuration of the proposed container terminal and related facilities has been substantially modified. It has also be determined that widening the Back Channel would be necessary to enhance navigational safety from Middle Harbor through the Back Channel to Cerritos Harbor in order to accommodate the number and size of ships anticipated to use Pier S. Furthermore, the Corps has determined that the scope of the in-water work requires preparation of an EIS. Accordingly, this DEIS/DEIR will consider the environmental impacts of the proposed marine terminal and Back Channel navigational safety improvements.

2. Proposed Action

Dredging of Cerritos Channel and Excavation of Adjacent Uplands

In order to allow for berthing of larger-class vessels and to improve navigational safety within the Cerritos Channel, the proposed project would involve widening of Cerritos Channel to to 808 feet between Pier A and future Pier S pierhead lines, including dredging of approximately 631,000 cubic yards of material from the Cerritos Channel and excavation of approximately 1,500,000 cubic yards of rock and sediment from the adjacent wharf (total disturbance area of approximately 39 acres), and re-alignment of approximately 1,600 feet of the existing riprap dike structure. Excavation would result in a conversion of 10.3 acres of uplands to open water. The minimum and maximum dredge depths extending 80 feet north of the future Pier S pierhead line would be −60 feet MLLW and −62 feet MLLW, respectively, including a 2-foot over-dredge allowance (overdepth). The proposed project would also include the installation of a 3,500-foot-long, 3-foot-thick, and 60- to 65-foot-deep soil-cement-bentonite barrier along the waterfront in order to prevent mixing of shallow (tidal) groundwater with stabilized sump material remaining from prior oil processing and remediation activities.

Dredging and Stabilization of Back Channel

In order to improve navigational safety within the Back Channel, the proposed project would also involve widening the Back Channel to a width of 323 feet and a depth of −52 feet (MLLW) plus up to 2 feet of overdepth, and widening the Back Channel Turning Basin at piers C, D, and S to a diameter of 1,200 feet and a depth of −52 feet (MLLW) plus up to 2 feet of overdepth. Total volumes of dredged and excavated material would be approximately 250,000 cubic yards of channel sediment and approximately 3,000 cubic yards of rock and soil from the adjacent wharf. Similar to Cerritos Channel, the Back Channel side slopes would be stabilized through the installation of a soil-cement embankment stabilization on both sides of the Back Channel and if necessary, at the turning basin, as well as through the placement of approximately 80,000 tons of rip-rap on the exposed slope.

Pier S Wharf

At present, the Pier S shoreline consists of a rocky slope along a non-uniform alignment and depth.

Improvements to the shoreline and adjacent upland areas are proposed in order to safely and efficiently accommodate larger class, modern container transport vessels. Specifically, these improvements would include the installation of approximately 470,000 tons of imported quarry rock for erosion protection, installation of approximately 2,000 concrete support piles (up to 110 feet in length), and construction of a 3,200-linear-foot, steel-reinforced concrete wharf and associated crane rails and utilities.

Container Terminal

The proposed project would include construction of a new 160-acre container terminal at Pier S, including LEED-certified terminal buildings, above and below-ground utilities, storm drain system, 12 rail-mounted electric-powered gantry cranes, and intermodal rail yard (10-loading tracks), served by a new lead track along the terminal's southwest corner.

Modification of Existing Facilities and Infrastructure

In order to allow for navigational safety in the Back Channel the proposed project would involve removal of an abandoned power plant intake structure (Long Beach Generating Station), relocation of an oil facility, realignment of approximately 2,800 feet of the existing Pier T east lead track, and potential modifications to the outfall structure of the adjacent Long Beach Generating Station.

Disposal of Dredged Material

The proposed project would include disposal of approximately 631,000 cubic yards of dredged material and 1,500,000 cubic yards of excavated wharf material from Cerritos Channel, and 250,000 cubic yards of dredged material and approximately 3,000 cubic yards of excavated wharf material from Back Channel at the agency-approved Middle Harbor landfills (*i.e.,* Piers D, E, and F). If required by timing or capacity constraints at the Middle Harbor sites, a small amount of chemically-suitable dredged material could be disposed of at the Western Anchorage Disposal Site and the approved LA–2 ocean disposal site following testing and agency approval.

3. Alternatives

Alternatives currently being considered include the following:

(1) Three-Berth Alternative—Container Terminal With Rail Access, Full-Length Wharf, and Back Channel Improvements (Proposed Project);

(2) Two-Berth Alternative—Container Terminal With Rail Access, Reduced-Length Wharf, and Back Channel Improvements;

(3) Multi-Use Storage Alternative (No Federal Action)—Multi-Use Storage Facility Without Wharf or Back Channel Improvements; and,

(4) No Project Alternative.

FOR FURTHER INFORMATION CONTACT: Copies of the document are available at *http://www.polb.com/ceqa,* as well as the following locations:

- Port of Long Beach Harbor Administration Building, 925 Harbor Plaza, Long Beach.
- Long Beach City Clerk, 333 W. Ocean Boulevard, Long Beach.
- Long Beach Main Library, 101 Pacific Avenue, Long Beach.
- San Pedro Regional Branch Library, 931 Gaffey Street, San Pedro.
- Wilmington Branch Library, 1300 N. Avalon Boulevard, Wilmington.

Questions about the proposed action and Draft EIS/EIR can be answered by John W. Markham, Corps Project Manager, at (805) 585–2150. Comments regarding the scope of the DEIS/DEIR shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Ventura Field Office, ATTN: File Number SPL–2006–2062, 2151 Alessandro Drive, Suite 110, Ventura, California 93001. Alternatively, comments can be e-mailed to *john.w.markham@usace.army.mil.* Comments should also be sent to Richard D. Cameron, Port of Long Beach, P.O. Box 570, Long Beach, CA 90801–0570 or e-mailed to *cameron@polb.com.*

Public Hearing and Comment Period

The Port of Long Beach and U.S. Army Corps of Engineers will jointly hold a public hearing to receive public comments and to assess public concerns regarding the Draft EIS/EIR and project on October 5, 2011, starting at 7 p.m. (doors open at 6:30 p.m.) in the Long Beach City Council Chambers in Long Beach, 333 W. Ocean Blvd., Long Beach, California. Written comments will be accepted until the close of the 45-day public review on November 7, 2011.

Mark D. Cohen,

Deputy Chief, Regulatory Division Los Angeles District.

[FR Doc. 2011–24507 Filed 9–22–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Record of Decision for the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and the Final General Conformity Determination for the Newhall Ranch Resource Management and Development Plan, Santa Clarita, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division (Corps) has made a Final General Conformity Determination (GCD) and executed a Record of Decision (ROD) for the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and a Section 404 Permit under the Clean Water Act for the Newhall Ranch Resource Management and Development Plan, Santa Clarita, California. This Notice serves as the Public Notice/Notice of Availability for the Final EIS/EIR ROD and the Final GCD. The Record of Decision for the Final EIS/EIR was signed on 31 August 2011.

In June 2010, the Corps, in coordination with the California Department of Fish and Game (CDFG), completed and published a joint Final EIS/EIR and Draft GCD, pursuant to National Environmental Policy Act (NEPA) and section 176(c) of the Clean Air Act. The identified least environmentally damaging practicable alternative (LEDPA) in the ROD includes permanent impacts to 47.9 acres of waters of the United States, including 5.1 acres of wetlands, associated with discharges of fill material for bank protection to protect land development projects along water courses (including buried soil cement, buried gunite, grouted riprap, ungrouted riprap, and gunite lining); drainage facilities such as storm drains or outlets and partially lined open channels; grade control structures; bridges and drainage crossings; building pads; and water quality control facilities (sedimentation control, flood control, debris, and water quality basins). The LEDPA also includes temporary impacts to 35.3 acres of waters of the United States, including 11.8 acres of wetlands, associated with the construction of bank protection to protect land development projects along water courses (including buried soil cement, buried gunite,

grouted riprap, ungrouted riprap, and gunite lining); utility crossings; activities associated with construction of a Water Reclamation Plant adjacent to the Santa Clara River and required bank protection; water quality control facilities (sedimentation control, flood debris, and water quality basins); regular and ongoing maintenance of all flood, drainage, and water quality protection structures and facilities on the RMDP site (such activities would include periodic inspection of structures and monitoring of vegetation growth and sediment buildup to ensure that the integrity of the structures is maintained and that planned conveyance capacity is present, routine repairs and maintenance of bridges and bank protection, and emergency maintenance activities); and temporary haul routes for grading equipment and geotechnical survey activities.

As a Federal agency, the Corps prepared the Final GCD in compliance with Section 176(c) of the Clean Air Act and for the issuance of a Corps Section 404 Permit for the discharges of fill material into waters of the United States. Direct and indirect air emissions for all pollutants related to the Federal action are not below specified *de minimis* Federal thresholds (40 CFR 93.153(b)).

On 31 August 2011, the Corps completed its environmental review and finalized the GCD, executed the ROD, and issued a provisional Section 404 Standard Individual Permit for the LEDPA. The Corps considered and responded to all comments received in finalizing the EIS/EIR, Final GCD, ROD, and issuing the provisional permit. The public can request copies of the Final General Conformity Determination document or the ROD from the Corps at the address listed below. In addition, copies of the Final General Conformity Determination document are available for review during the next 30 days at the following libraries: County of Los Angeles Newhall Branch, Castaic Branch, Sylmar Branch, Valencia Branch, and the County of Ventura Fillmore Branch.

FOR FURTHER INFORMATION CONTACT: Questions or requests concerning the Final General Conformity Determination or the ROD should be directed to: Dr. Aaron O. Allen, Chief, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 110, Ventura, California 93001, (805) 585–2148.

SUPPLEMENTARY INFORMATION: None.

Dated: September 19, 2011.

David J. Castanon,

Chief, Regulatory Division, Los Angeles District.

[FR Doc. 2011–24509 Filed 9–22–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of a Draft Environmental Impact Statement in Cooperation With the North Carolina Department of Transportation for Improvements to the US 17 and Market Street (US 17 Business) Corridor in Northern New Hanover and Southern Pender Counties, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Division is issuing this notice to advise the public that a State of North Carolina funded Draft Environmental Impact Statement (DEIS) has been prepared describing proposed improvements to the transportation system starting at Military Cutoff Road in New Hanover County to north of Hampstead along US 17, Pender County, NC (TIP Projects U–4751 and R–3300).

DATES: Written comments on the Draft EIS will be received until November 1, 2011.

ADDRESSES: Mr. Brad Shaver, Regulatory Project Manager, Wilmington Regulatory Field Office, 69 Darlington Ave., Wilmington, NC 28403 or Ms. Olivia Farr, Project Development Engineer, North Carolina Department of Transportation (NCDOT), 1548 Mail Service Center, Raleigh, NC 27699–1548.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Brad Shaver, COE—Regulatory Project Manager, telephone: (910) 251–4611 or Ms. Olivia Farr, NCDOT—Project Development Engineer, telephone: (919) 733–7844, ext. 253.

SUPPLEMENTARY INFORMATION: The COE in cooperation with the North Carolina Department of Transportation has prepared a DEIS on a proposal to make transportation improvements to the US 17 and Market Street (US 17 Business) corridor in northern New Hanover and southern Pender Counties. Two North Carolina Department of Transportation Improvement Program (TIPs U–4751 and R–3300) projects are being evaluated as part of the US 17 Corridor Study.

The purpose of the US 17 Corridor Study project is to improve the traffic carrying capacity and safety of the US 17 and Market Street corridor in the project area. The project study area is roughly bounded on the west by I–40, on the north by the Northeast Cape Fear River, Holly Shelter Game Lands to the east, and Market Street and US 17 to the south.

This project is being reviewed through the Merger 01 process designed to streamline the project development and permitting processes, agreed to by the COE, North Carolina Department of Environment and Natural Resources (Division of Water Quality, Division of Coastal Management), Federal Highway Administration (for this project not applicable), and the North Carolina Department of Transportation and supported by other stakeholder agencies and local units of government. The other partnering agencies include: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; N.C. Wildlife Resources Commission; N.C. Department of Cultural Resources; and the Wilmington Metropolitan Planning Organization. The Merger process provides a forum for appropriate agency representatives to discuss and reach consensus on ways to facilitate meeting the regulatory requirements of Section 404 of the Clean Water Act during the NEPA/SEPA decision-making phase of transportation projects.

In 2006 the project was presented to Federal and State Resource and Regulatory Agencies to gain concurrence on the purpose and need for the project. The aforementioned purpose and need of the project was agreed upon by participating agencies in September of 2006. In January 2007, the project was again presented to participating agencies regarding the preliminary corridor screening process in an attempt to decide which alternatives would be carried forward for detailed analysis. In August of 2007, the alternatives to carry forward were identified. The COE has worked closely with NCDOT and its representatives to identify jurisdictional resources within the alternatives carried forward. Upon completion of the DEIS, NCDOT submitted a request to the COE to solicit comment from the public in order to identify the Least Environmentally Damaging Practicable Alternative (LEDPA) for the project. This determination is expected in late 2011.

Citizen public hearings are being scheduled by NCDOT for the Fall of 2011 at which time citizens will be able

to voice their opinions on the LEDPA decision.

The DEIS is available on the COE Web site at: *http://www.saw.usace.army.mil/Wetlands/Projects/HampsteadBypass* and also available on the NCDOT Web site at: *http://www.ncdot.org/projects/US17HampsteadBypass/*. Any person having difficulty in viewing the document online can contact the COE project manager or the NCDOT project manager for a CD copy of the document.

After distribution and review of the Draft EIS and Final EIS, the Applicant understands that the U.S. Army Corps of Engineers in coordination with the North Carolina Department of Transportation will issue a Record of Decision (ROD) for the project. The ROD will document the completion of the EIS process and will serve as a basis for permitting decisions by Federal and State agencies.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the U.S. Army Corps of Engineers at the address provided. The Wilmington District will periodically issue Public Notices soliciting public and agency comment on the proposed action and alternatives to the proposed action as they are developed.

Dated: September 15, 2011.

S. Kenneth Jolly,

Chief, Wilmington Regulatory District.

[FR Doc. 2011–24485 Filed 9–22–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Puyallup River General Investigation Study, Pierce County, WA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The Seattle District, U.S. Army Corps of Engineers (USACE) will prepare a Draft Environmental Impact Statement (DEIS) pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, for a proposed flood-risk management project in the Puyallup River Basin including the Puyallup River downstream of Electron Dam to Commencement Bay, the Carbon River and the White River downstream of Mud Mountain Dam. This study was requested by Pierce County (the local sponsor), Washington, because of the potential for significant flooding within the Puyallup River Basin.

A DEIS is being prepared because of the potential for impacts on environmental resources, particularly salmonid habitat, and the intense public interest already demonstrated in addressing the flooding problems of the Puyallup, Carbon and White Rivers.

The Puyallup River General Investigation (GI) DEIS for the Puyallup River Basin is being conducted under the authority of Section 209 of the Flood Control Act of 1962, Public Law 87–874. That section authorized a comprehensive study of Puget Sound, Washington, and adjacent waters including tributaries, in the interest of flood control, navigation, and other water uses and related land resources.

DATES: Persons or organizations wishing to submit study scoping comments should do so by October 24, 2011. Public comment may also be made at the study scoping meeting October 6, 2011 in Fife, Washington (see Scoping Meeting). Notification of scoping meeting times and locations will be sent to all agencies, organizations, and individuals on the project mailing list.

ADDRESSES: All comments on the proposed project, requests for inclusion on the mailing list and future documents should be sent to: Amanda Ogden, Study Environmental Coordinator, Seattle District, U.S. Army Corps of Engineers, P.O. 3755, Seattle, WA 98124–3755, *Attn:* CENWS–PM–ER; telephone (206) 764–3628; fax (206) 764–4467; or e-mail *Amanda.Ogden@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: General questions concerning the proposed action and the DEIS can be directed to: Amanda Ogden, Study Environmental Coordinator (see **ADDRESSES**) or C.J. Klocow, Project Manager, Seattle District, U.S. Army Corps of Engineers, P.O. 3755, Seattle, WA 98124–3755, *Attn:* CENWS–PM–CP; telephone (206) 764–6073; fax (206) 764–4467; or e-mail *Charles.J.Klocow@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Background. The Puyallup River basin encompasses a drainage area of approximately 1,040 square miles. Major tributaries include the Carbon and White Rivers. The Puyallup, Carbon and White Rivers drain the northern flank of Mount Rainier. The study area for the DEIS will be the Puyallup River downstream of Electron Dam to Commencement Bay, the Carbon River and the White River downstream of Mud Mountain Dam.

The purpose of the Puyallup River GI study is to better identify the problems and opportunities that exist to relieve the potential for flooding, reduce flood risks and to develop a flood-risk management plan that fits Federal law and policy and is within the capability of the local sponsor to support their required share of the total project costs.

This is a single-purpose flood-risk management study. The goal of this project is to identify the National Economic Development (NED) plan, the flood-risk management alternative that provides the maximum net economic benefits. In accordance with USACE policy, minimization of ecosystem, cultural, and socio-economic impacts will be significant project considerations (Reference: ER 1105–2–100, Planning Guidance Notebook). The local sponsor may request the recommendation of a plan other than the NED, the Locally Preferred Plan (LPP).

Alternatives. In the reconnaissance phase for the Puyallup River GI study, USACE identified two alternative courses of action for further analysis which are outlined below.

Alternative 1—No Action: Allow the current levee system to remain in place without a major system-wide levee system upgrade. Individual jurisdictions would continue to operate, maintain, and repair the existing levees, and dams on the Puyallup River and White River would continue present operations for flood reduction.

Alternative 2: Construct a coordinated flood-risk management project that would provide critically needed flood-risk management measures at an affordable cost in a reasonable timeframe and that will subsequently be authorized and implemented.

Pierce County and USACE are in the process of developing an array of structural and nonstructural measures for addressing problems and opportunities and for achieving project objectives. These measures will be presented to the public at several workshops in Pierce County and to resource and Tribal groups and agencies over the course of project development.

Some or all of the measures will be combined to form the range of alternatives. In the DEIS, the preferred alternative will be selected based on screening and evaluation of the range of alternatives.

Scoping. Public involvement will be sought during scoping, plan formulation, and preparation of the

DEIS in accordance with NEPA procedures. A public scoping process has been started: (1) To clarify which issues appear to be major public concerns, (2) to identify any information sources that might be available to analyze and evaluate impacts, and (3) to obtain public input and determine acceptability for the range of measures to be included within potential alternatives.

This NOI formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, state, and local agencies; Tribes; the public; and other interested private organizations, including environmental groups, are invited to comment on the scope of the DEIS. Comments are requested regarding issues of concern, project alternatives, potential mitigation measures, probable significant environmental impacts, and permits or other approvals that may be required by any project.

The following key areas have been identified so far to be analyzed in depth in the DEIS:

1. Flooding characteristics (existing and with any project).

2. Impacts to fish habitat and fisheries resources.

3. Impacts to riparian habitat.

4. Impacts to wetlands.

5. Impacts to cultural resources.

6. Impacts to surrounding communities.

7. Impacts to geomorphic processes.

Scoping Meeting. Opportunity to comment on the planned study will also be available at the study scoping meeting which is scheduled for October 6, 2011 at the Fife Community Center, 2111 54th Avenue East, Fife, WA, 98424. The scoping meeting will commence at 4 p.m. with an open house, followed by presentations and a formal hearing at 5:30 pm. Details of the meeting time and location will be announced in the local media. Notices will be sent to all agencies, organizations, and individuals on the mailing list.

Availability of DEIS. USACE expects to complete preparation of the DEIS and make it available for public review by the fall of 2013.

Dated: September 15, 2011.

Bruce A. Estok,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 2011–24484 Filed 9–22–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

RIN 1894–AA01

Race to the Top Fund Phase 3; Correction

AGENCY: Department of Education.

ACTION: Proposed Requirements; Correction.

SUMMARY: On September 12, 2011, the Secretary of Education (Secretary) published a notice in the **Federal Register** proposing requirements for Phase 3 of the Race to the Top program (RTT–Phase 3 NPR) (76 FR 56183). The RTT–Phase 3 NPR was incomplete and included minor errors. Through this document, we correct the errors and add the information that was unintentionally omitted. Except as corrected by this notice, the RTT–Phase 3 NPR, including the date by which public comments are due, remains unchanged.

FOR FURTHER INFORMATION CONTACT: Meredith Farace, Implementation and Support Unit, 400 Maryland Avenue, SW., Washington, DC 20202–6200. Telephone: (202) 453–6690 or by e-mail: *phase3comments@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: We make the following corrections to the RTT–Phase 3 NPR:

On page 56183, third column, under **FOR FURTHER INFORMATION CONTACT**, we correct the telephone to read ''(202) 453–6690.''

On page 56184, third column, we correct the paragraph that begins with the words ''Under the Race to the Top Phase 3 award process proposed in this notice, eligible applicants'' by replacing it with the following two paragraphs:

Additionally, the Department will maintain an emphasis in the Race to the Top Phase 3 awards on promoting science, technology, engineering, and mathematics (STEM) education, consistent with the competitive preference priority in the Race to the Top Phase 1 and Phase 2 competitions. In order to meet this requirement, a State will include in its detailed plan and budget for Phase 3 funding how it will allocate a meaningful share of its Phase 3 award to advance STEM education in the State. To do this, eligible applicants will select from among their Phase 2 application: (1) Activities proposed by the State to meet the competitive preference priority; or (2) activities within one or more of the four core education reform areas that are most likely to improve STEM education.

Under the Race to the Top Phase 3 award process proposed in this notice, eligible applicants would be limited to Race to the Top Phase 2 finalists that did not receive a Phase 2 award, and those eligible applicants could apply for a proportional share of these funds. Race to the Top Phase 3 funding is not at the level of funding that was available for the Race to the Top Phase 1 and Phase 2 competitions. Accordingly, we are proposing that eligible applicants (1) Select from among the activities they proposed to implement in their Phase 2 applications those activities that will have the greatest impact on advancing their overall statewide reform plans, including activities that are most likely to improve STEM education, (2) use Race to the Top Phase 3 funding to support those specific activities, and (3) ensure that such activities are consistent with the ARRA requirement to allocate 50 percent of Race to the Top funds to local educational agencies (LEAs).

On page 56185, third column, we correct paragraph (g) to read as follows:

(g) The State will select activities for funding that are consistent with the commitment to comprehensive reform and innovation that the State demonstrated in its Race to the Top Phase 2 application, including activities that are most likely to improve STEM education.

On page 56186, first column, we correct the paragraph following the estimated State budget amounts chart to read as follows:

Once the Department notifies a qualified applicant of the final amount of funds it is eligible to receive for a Race to the Top Phase 3 award, the applicant must submit a detailed plan and budget describing the activities it has selected from its Race to the Top Phase 2 application that it proposes to implement with Race to the Top Phase 3 funding, including how the State will allocate a meaningful share of its Phase 3 award to advance STEM education in the State. This detailed plan must include an explanation of why the applicant has selected these activities and why the applicant believes such activities will have the greatest impact on advancing its overall statewide reform plan. The plan also must include a description of the State's process for allocating at least 50 percent of Race to the Top Phase 3 funds to participating LEAs, as required by section 14006(c) of the ARRA. Subgrants to LEAs must be based on their relative shares of funding under Title I, Part A of the ESEA, and LEAs must use these funds in a manner that is consistent with the State's

updated plan and the MOU or other binding agreement between the LEA and the State. A State may establish more specific requirements for LEA use of funds provided they are consistent with the ARRA, with the proposed requirements of this notice, and with the Race to the Top requirements. (*See* the notice of final priorities, requirements, definitions, and selection criteria for the Race to the Top Fund published in the **Federal Register** on November 18, 2009 (74 FR 59688).)

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** is available via the Federal Digital System at *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 21, 2011.

Arne Duncan,

Secretary of Education.

[FR Doc. 2011–24624 Filed 9–21–11; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8999–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 09/12/2011 Through 09/16/2011

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110315, Final EIS, USFS, MN, South Fowl Lake Snowmobile Access Project, Proposing a Replacement Snowmobile Trail between McFarland Lake and South Fowl Lake, Gunflint Ranger District, Superior National Forest, Eastern Region, Cook County, MN, *Review Period Ends:* 10/24/2011, *Contact:* Peter Taylor 218–626–4368.

EIS No. 20110316, Draft EIS, USACE, CA, Pier S Marine Terminal Development and Back Channel Navigational Safety Improvements, Construction and Operation, U.S. Army COE Section 10 and 404 Permit and Section 103 of the Marine Protection Research and Sanctuaries Act, Los Angeles County, CA, *Comment Period Ends:* 11/07/2011, *Contact:* John W. Markham 805–585–2150.

EIS No. 20110317, Draft EIS, USFS, MT, Lonesome Wood Vegetation Management 2 Project Areas, Proposed Forest Thinning, Prescribed Burning and Associated Activities, Habgen Lake Ranger District, Gallatin National Forest, Gallatin County, MT, *Comment Period Ends:* 11/07/2011, *Contact:* Teri Seth 406–522–2539.

EIS No. 20110318, Final EIS, BLM, AZ, Ironwood Forest National Monument, Resource Management Plan, Implementation, Tucson Field Office, AZ, *Review Period Ends:* 10/24/2011, *Contact:* Laura Olais 520–258–7242.

EIS No. 20110319, Draft Supplement, NOAA, CA, Southwest Fisheries Science Center (SWFSC), Demolition, Soil Stabilization and Seismic Improvement in La Jolla, CA, *Comment Period Ends:* 11/07/2011, *Contact:* William F. Broglie 206–526–4837.

EIS No. 20110320, Final EIS, NOAA, CA, ADOPTION—Bair Island Restoration and Management Plan, Tidal Action Restoration, Don Edwards San Francisco Bay National Wildlife Refuge, Bair Island State Ecological Reserve, South San Francisco Bay, San Mateo County, CA, *Review Period Ends:* 10/24/2011, *Contact:* Patricia A. Montanio 301–427–8618. U.S. DOC has adopted the DOI, SFW'S FEIS #20060314, filed 07/24/2006. DOC was not a Cooperating Agency for the above FEIS; recirculation of the document is necessary under 40 CFR 1506.3(b).

EIS No. 20110321, Draft EIS, BLM, CA, South Coast Resource Management Plan Revision, Implementation, San Diego, Riverside, San Bernardino, Orange and Los Angeles Counties, CA, *Comment Period Ends:* 12/21/2011, *Contact:* Greg Hill 760–833–7140.

EIS No. 20110322, Draft EIS, USACE, NC, NC–1409 (Military Cutoff Road) Extension and Proposed US 17 Hampstead Bypass, New Hanover and Pender Counties, NC, *Comment Period Ends:* 11/15/2011, *Contact:* Brad Shaver 910–251–4611.

EIS No. 20110323, Draft Supplement, USFS, MI, Huron-Manistee National Forests, Supplement the 2006 FEIS Analysis and to Correct the Deficiencies that the Meister Panel Identified, Land and Resource Management Plan, Implementation, Several Counties, MI, *Comment Period Ends:* 12/21/2011, *Contact:* Ken Abrogate 231–775–2421.

EIS No. 20110324, Final EIS, FHWA, 00, Interstate 5 Columbia River Crossing Project, Bridge, Transit, and Highway Improvements, from State Route 500 in Vancouver, WA to Columbia Boulevard in Portland, OR, Funding, U.S. COE Section 10 & 404 Permits, NPDES Permit, *Review Period Ends:* 10/24/2011, *Contact:* James Saxon 206–220–4311.

Amended Notices

EIS No. 20110257, Draft EIS, FRA, CA, California High-Speed Train (HST): Merced to Fresno Section High-Speed Train, Propose to Construct, Operate, and Maintain an Electric-Powered High-Speed Train (HST), Merced, Madera and Fresno Counties, CA, *Comment Period Ends:* 10/13/2011, *Contact:* David Valenstein 202–493–6868. Revision to FR Notice Published: Extending Comment Period from 09/28/2011 to 10/13/2011.

Dated: September 20, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–24504 Filed 9–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9470–8]

2011 Fall Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2011 Fall Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context. The Commission will be evaluating potential measures and considering actions in areas such as performance standards for electric generating units (EGUs) for high electric demand days; oil and gas boilers serving EGUs; small natural gas boilers; stationary generators; energy security/energy efficiency; architectural industrial and maintenance coatings; consumer products; institutional, commercial and industrial (ICI) boilers; vapor recovery at gas stations; large above ground storage tanks; seaports; aftermarket catalysts; lightering and non-road idling.

DATES: The meeting will be held on November 10, 2011 starting at 9 a.m. and ending at 4 p.m.

Location: Hotel DuPont, 11th and Market Streets, Wilmington, Delaware 02199; (302) 594–2100.

FOR FURTHER INFORMATION CONTACT:

For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org;* Web site: *http://www.otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by e-mail: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org.*

Dated: September 6, 2011.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 2011–24537 Filed 9–22–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0674; FRL–8888–8]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 100–EUP–RRL from Syngenta Crop Protection, LLC requesting an experimental use permit (EUP) for the acibenzolar S-methyl. The Agency has determined that the permit may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0674, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington,VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2011–0674. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line *at http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rose Mary Kearns, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5611; e-mail address: *kearns.rosemary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action

to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 5 of FIFRA, 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Syngenta Crop Protection, LLC, (100–EUP–RRL).

Pesticide Chemical: Acibenzolar S-methyl.

Summary of Request: Syngenta proposes that an EUP be allowed and initiated on May 1, 2012 and extended for up to two years ending on September 1, 2014. The purpose is to allow broader acres to be treated in order to better evaluate the diseases. Due to the nature of the crops, small plots are not feasible and crop destruct is very expensive. The formulation to be used for the EUP will be Actigard 50WG®. Geographic areas: 10 states, representing diverse agronomic zones; permission to conduct the EUP is requested within EPA Regions 1, 2, 3, 5, 10, and 11. Distribution within each EPA Region will be determined based upon state regulatory approval, availability of suitable testing sites, and availability/participation of non-Syngenta personnel, *e.g.,* university cooperators or other factors. Use of test product will be closely monitored and records will accurately document the disposition of all testing material. Trial applications will be made by licensed applicators. A temporary tolerance of 0.05 parts per million (ppm) for acibenzolar S-methyl is proposed in pome fruit and 0.05 ppm in citrus fruit during the experimental use period requested from 2012 through 2014.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application as described under **ADDRESSES**.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: September 14, 2011.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–24515 Filed 9–22–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, September 27, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–24531 Filed 9–21–11; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

Federal Register Citation of Previous Announcement—76 FR 58276 (September 20, 2011)

DATE AND TIME: Thursday, September 22, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

CHANGES IN THE MEETING: The following item has been added to the agenda:

Draft Advisory Opinion 2011–14: Utah Bankers Association.

Individuals who plan to attend and require special assistance, such as sign

language interpretation or other reasonable accommodations, should contact Shelley Garr, Deputy Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–24661 Filed 9–21–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

APLUS Worldwide Logistics, Corp. (NVO & OFF), 2129 NW., 79th Avenue, Doral, FL 33122. *Officer:* Alexis E. Parejo, President/Secretary/Treasurer. (Qualifying Individual). *Application Type:* Add NVO Service.

AtsaCargo, Inc. (NVO & OFF), 2624 NW., 112th Avenue, Miami, FL 33172. *Officers:* Arcenio T. Nunez, Vice President. (Qualifying Individual) Arsenio T. Matos, President. *Application Type:* Add NVO Service.

Bayanihan Cargo International Inc. (NVO), 925 Linden Avenue, Unit #D, South San Francisco, CA 94080. *Officers:* Manuel A. Espinosa, President. (Qualifying Individual) Amparo A. Espinosa, Vice President. *Application Type:* New NVO License.

Cargo One Inc. dba Cargo One (NVO), 287 Northern Boulevard, #204, Great Neck, NY 11021. *Officers:* Yoji Kurita, Chief Executive Officer/Secretary. (Qualifying Individual) Akira Tsuneda, Director/COB. *Application Type:* QI Change.

Contour Logistics Inc. (NVO & OFF), 2950 Turnpike Drive, #19, Hatboro, PA 19040. *Officer:* Vera Sumetskaya, President. (Qualifying Individual) *Application Type:* Add NVO Service.

Da-Wood Trading LLC (NVO & OFF), 110 Godley Road, Port Wentworth, GA 31407. *Officer:* Francis Lucas, CEO. (Qualifying Individual) *Application Type:* New NVO & OFF License.

DVN Carriers, LLC (NVO), 4747 Bellaire Blvd., Suite 275, Bellaire, TX 77401. *Officer:* Charles R. Griswold, President/Manager. (Qualifying Individual) *Application Type:* Business Structure Change & QI Change.

eShipping, LLC (OFF), 173 English Landing Drive, Suite 210, Parkville, MO 64152. *Officers:* Matthew P. Weiss, Vice President, (Qualifying Individual) Chad Earwood, Manager, President. *Application Type:* New OFF License.

GAC Energy & Marine Services LLC (NVO & OFF), 16607 Central Green Blvd., #200, Houston, TX 77032. *Officers:* Yalonda R. Henderson, Vice President (Operations). (Qualifying Individual) Walter Bandos, CEO. *Application Type:* Add NVO Service.

Multimodal International Shipping, Inc. dba Masterpiece Ocean, Freight Ltd. (NVO & OFF), 615 N. Nash Street, Suite 300, El Segundo, CA 90245. *Officers:* Michael P. Ambrosia, Secretary. (Qualifying Individual) David G. Epstein, Director/President. *Application Type:* QI Change.

Ron Logistics, Inc. (NVO & OFF), 6617 NW. 84th Avenue., Miami, FL 33166. *Officers:* Jose A. Ron, Director. (Qualifying Individual) Rita D. De Ron, Director. *Application Type:* New NVO & OFF License.

TRC Transport Intl, Corp. (NVO & OFF), 4775 NW. 72nd Avenue, Miami, FL 33166. *Officers:* Arcenio Taveras Nunez, President. (Qualifying Individual) Dora Taveras, Vice President/Secretary. *Application Type:* New NVO & OFF License.

Dated: September 19, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–24414 Filed 9–22–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
021405N	JBL Services, Inc., 625 Gatewood, Garland, TX 75043	July 6, 2011.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–24413 Filed 9–22–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 004473F.

Name: Maromar International Freight Forwarders Inc. dba Maromar Shipping Line.

Address: 8710 NW. 99th Street, Medley, FL 33178.

Date Revoked: August 17, 2011.

Reason: Failed to maintain a valid bond.

License Number: 17499N.

Name: Unico Logistics Inc.

Address: 147–04 183rd Street, Suite 203, Jamaica, NY 11413.

Date Revoked: August 1, 2011.

Reason: Failed to maintain a valid bond.

License Number: 17529N.

Name: Champion Int'l Freight, Inc.

Address: 3355 Spring Mountain Road, Suite 66, Las Vegas, NV 89102.

Date Revoked: August 1, 2011.

Reason: Failed to maintain a valid bond.

License Number: 019746N.
Name: Carmen Cargo Express Inc.
Address: 2130 SW. 58th Way, West Park, FL 33023.
Date Revoked: August 25, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019901N.
Name: Ambiorix Cargo Express Inc.
Address: 453 East 167th Street, Bronx, NY 10456.
Date Revoked: August 21, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020213NF.
Name: Transport Team USA, Inc.
Address: 1050 Wall Street West, Suite 201, Lyndhurst, NJ 07071.
Date Revoked: August 18, 2011.
Reason: Failed to maintain valid bonds.

License Number: 020445NF.
Name: Freight It, Inc.
Address: 11222 La Cienega Blvd., Suite 555, Inglewood, CA 90304.
Date Revoked: August 6, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021359N.
Name: Titan International Logistics, LLC.
Address: 16905 Cherie Place, Carson, CA 90746.
Date Revoked: August 27, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021420N.
Name: ASG Corporation dba RJL Logistics.
Address: As Lito Rd., Koblerville Village, CK, Saipan, MP 96950.
Date Revoked: August 12, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021781F.
Name: T.V.L. Global Logistics Corp.
Address: 9550 Flair Drive, Suite 501, El Monte, CA 91731.
Date Revoked: August 24, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021854NF.
Name: Global Freight Company, Inc.
Address: 6485 Shiloh Road, Suite B–500, Alpharetta, GA 30005.
Date Revoked: August 24, 2011.
Reason: Failed to maintain valid bonds.

License Number: 022017F.
Name: Shinyoung Express Inc.
Address: 1490 Beachey Place, Carson, CA 90746.
Date Revoked: August 13, 2011.
Reason: Failed to maintain a valid bond.

License Number: 022279N.
Name: PB Direct Corporation.
Address: 808 Ahua Street, MB98, Honolulu, HI 96819.
Date Revoked: August 25, 2011.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. 2011–24412 Filed 9–22–11; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0330; 30-Day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project—Annual Appellant Climate Survey—0990–0330—REVISION—Office of Medicare Hearings and Appeals (OMHA).

Abstract: The OMHA Appellant Climate Survey is a survey of Medicare beneficiaries, providers, and suppliers who had a hearing before an Administrative Law Judge (ALJ) at the Office of Medicare Hearings and Appeals (OMHA). Appellants dissatisfied with the outcome of their Level 2 appeal may request a hearing before an OMHA ALJ. The Appellant Climate Survey will be used to measure appellant satisfaction with their OMHA appeals experience, as opposed to their satisfaction with a specific ruling.

OMHA was established by the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173) and became operational on July 1, 2005. The MMA legislation and implementing regulations issued on March 8, 2007 instituted a number of changes in the appeals process. The MMA legislation also directed the U.S. Department of Health and Human Services to consider the feasibility of conducting hearings using telephone or video-teleconference technologies. In carrying out this mandate, OMHA makes extensive use of video-teleconferencing to provide appellants with a vast nationwide network of access points for hearings close to their homes. The survey will gauge appellants' satisfaction with this new service along with the overall appeals experience. The first three-year administration cycle of the OMHA survey began in FY08. The survey will continue to be conducted annually over a three-year period, beginning in FY12. Results from the surveys will be used to gauge progress made in increasing satisfaction among appellants.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Total burden hours
OMHA Appellant Climate Survey	Appellants	400	1	11/60	73

Keith Tucker,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–24495 Filed 9–22–11; 8:45 am]

BILLING CODE 4150–46–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-Day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Patient Centered Care Collaboration to Improve Minority Health, OMB# 0990–New, Office of Minority Health.

Abstract: The Office of Minority Health (OMH) in the Office of the Assistant Secretary for Health (OASH), Office of the Secretary (OS) is requesting approval from the Office of Management and Budget (OMB) for new data collection activities for the Patient Centered Care Collaboration to Improve Minority Health project (PCCC). This dissemination and adoption initiative funded in 2010, under the ARRA, 2009, through the Office of Minority Health and the Agency for Health Care Quality supports dissemination and adoption priorities as outlined in the HHS Report to Congress on Comparative Effectiveness Research. The PCCC evaluation will assess whether disseminating a diabetes education intervention in a community based health clinic and offering a medication management and adherence intervention through home visits to seniors, improves the health and well being of racial and ethnic minority program participants; if the approach taken through the implementation of proven PCOR findings such as using community health workers and educators, and pharmacists to deliver the interventions improves the likelihood of patients changing their behaviors to improve their health status; and to determine if participants learned new information and skills that would help them to manage their health conditions and improve their health status.

Primary data for the evaluation will come from two waves of in person data collection from patients in a community health center in Chicago, Illinois and patients living in public housing in Houston, Texas. Data will be collected through a baseline survey at beginning of intervention, and a follow up survey at approximately three months post-baseline in the two sites. Data collection for the entire evaluation is expected to last 6 months, from the time the first participant is enrolled until the last 4 month follow up survey is administered.

The funding for this request is derived from American Reinvestment and Recovery Act of 2009 with hard and non-negotiable deadlines for expenditures and completion. The end date for completion of all activities funded under this initiative is June 12, 2012. Thus, a rapid approval of OMB is requested, or the benefits of this initiative cannot be evaluated and HHS would not be able to report the benefits and outcome to the Congress as required.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Chicago					
Screening Questionnaire	Individuals	165	1	5/60	14
Intake Questionnaire	Individuals	50	1	40/60	33
Post Questionnaire	Individuals	40	1	40/60	27
Sub-Total		255	1		74
Houston					
Eligibility Screening Form: Hypertension and Diabetes.	Individual	200	1	15/60	50
First Home Visit Forms: Hypertension, Diabetes, or Hypertension and Diabetes.	Individual	200	1	40/60	133
Telephone Follow-up: Being Active and Managing Stress.	Individual	180	1	20/60	60
Telephone Follow-up: Healthy Eating	Individual	180	1	20/60	60
Post Intervention Follow-up Form: Hypertension, Diabetes, or Hypertension and Diabetes.	Individual	180	1	20/60	60
Sub-total		940			363

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Total	Individual	1195			437

Keith Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–24442 Filed 9–22–11; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Multi-Payor Claims Database (New—XXXXXXX).

Office of the Assistant Secretary for Planning and Evaluation (ASPE)—American Recovery and Reinvestment Act-funded Comparative Effectiveness Research Program.

Abstract

The Multi-Payor Claims Database (MPCD) project is one of a number of initiatives related to comparative effectiveness research (CER) funded by the American Recovery and Reinvestment Act of 2009. The Act provided $1.1 billion to build the necessary infrastructure and capacity to support CER. Approximately 25% of the $400 million allocated to the Office of the Secretary for Health and Human Services went towards data infrastructure projects such as the MPCD. Within HHS, ASPE was tasked with managing the MPCD project in partnership with the Center for Medicare and Medicaid Services (CMS).

The project represents a private/public partnership with the goal of consolidating access to longitudinal data on health services financed by both public and private payers to help facilitate CER. Inclusion of data from multiple sources should allow for adequate coverage of priority patient populations, less common medical conditions, health care interventions, and geographic areas. As the title of the project suggests, the MPCD will initially include claims data, since these data are most readily available. Over time, data with additional clinical detail from other sources, such as EHRs, may be incorporated into the database.

The contract to develop the MPCD is a 3-year contract between Ingenix Public Sector Solutions (as the primary contractor) and ASPE. We envision several types of respondents, accessing data at different tiers within the MPCD, as shown in the table below. The respondents will not be accessing data on any regular frequency, but rather on an ad hoc basis. The affected public will be individual researchers, health policy analysts and researchers at affiliated with MPCD data contributors as well as key stakeholder staff and analysts within HHS.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Tiers 1, 2 and 3	Principal Investigators, Project Data Analysts and Project Directors.	293	3	35/60	513
Tiers 1 and 2	Healthcare Organization administrators and analysts.	125	3	20/60	125
Tier 1	Patients and consumers	50	4	5/60	17
Total					655

Keith Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–24444 Filed 9–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-Day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Teen Pregnancy Prevention Replication Evaluation: Implementation Data Collection—OMB No. OS–0990–NEW—The Office of Adolescent Health in collaboration with the Office of the Assistant Secretary for Planning and Evaluation.

Abstract: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

OAH in partnership with ASPE will be overseeing the Teen Pregnancy Prevention Replication Evaluation (TPP Replication Evaluation). The TPP Replication Evaluation will be an experimental evaluation which will determine the extent to which a subset of evidence-based program models funded as part of the OAH evidence-based Teen Pregnancy Prevention Initiative demonstrate effects on adolescent sexual risk behavior and teenage pregnancy when they are replicated in similar and in different settings and for different populations. The findings from this evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

OAH and ASPE are proposing implementation data collection activity as part of the TPP Replication Evaluation. The proposed activity involves the collection of information from program records and site visits at two to three points in the program implementation period. The implementation study will enable us to understand the programs, document their implementation and context, assess fidelity of implementation and the factors that influence it, and describe the counterfactual, or the ''business as usual'' services received by youth in the control group. This information will enable us to describe each implemented program and the treatment-control contrast evaluated in each site. It will also help us interpret impact analysis findings and may help explain any unexpected findings, differences in impacts across programs, and differences in impacts across locations or population subgroups.

Respondents: Semi-structured individual and group interviews will be held with agency administrators, program leaders and staff, partners in program participation, participating youths, school and community stakeholders, and other community members knowledgeable about related services for adolescents. All information will be collected by trained professional staff.

ESTIMATED ANNUALIZED BURDEN TABLE

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours	Average hourly wage of respondents	Total annual burden cost
TPP Replication Evaluation:						
Discussion guide for grantee head (1)	10	1	1.5	15	$30	$450
Discussion guide for program director (1)	10	1	1.5	15	25	400
Discussion guide for supervisor of frontline staff (1)	10	1	1.5	15	25	400
Discussion guide for frontline staff (3)	30	1	1.5	45	20	900
Discussion guide for community partners (3)	30	1	1	30	20	600
Discussion guide for school stakeholders (3)	30	1	1	30	20	600
Discussion guide for community stakeholders (3)	30	1	1	30	20	600
Focus group guide for frontline staff (6)	60	1	1.5	90	15	1,350

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours	Average hourly wage of respondents	Total annual burden cost
Focus group guide for youth participants (10)	100	1	1.5	150	NA	0
Totals	310			420		$5,300

Keith Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–24443 Filed 9–22–11; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Human Immunodeficiency Virus (HIV) Prevention Projects for Young Men of Color Who Have Sex with Men and Young Transgender Persons of Color, Funding Opportunity Announcement (FOA) PS11–1113, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–3 p.m., October 3, 2011 (Closed).

Place: CDC, Corporate Square, Building 8, Room 3015, Atlanta, Georgia 30329, *Telephone:* (877) 691–5831.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of an application received in response to ''HIV Prevention Projects for Young Men of Color Who Have Sex with Men and Young Transgender Persons of Color, FOA PS11–1113.'' This meeting will be subsequent to the July 10–13, 2011, and the July 22, 2011, meetings published in the **Federal Register** on February 22, 2011, Volume 76, Number 35, Pages 9785–9786 and July 7, 2011, Volume 76, Number 130, Page 39879. An application submitted via *http://www.grants.gov* within the specified timeframe was not reviewed during the initial review period; therefore, the application requires review.

Contact Person for More Information: Harriette Lynch, Public Health Analyst, Extramural Programs, National Center for HIV, Hepatitis and Sexually Transmitted Diseases Prevention, CDC, 1600 Clifton Road, NE., Mailstop E–60, Atlanta, Georgia 30333, *Telephone:* (404) 498–2726, *E-mail: HLynch@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: September 20, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–24667 Filed 9–22–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH); Notice of Cancellation

This notice was published in the **Federal Register** on September 8, 2011, Volume 76, Number 174, page 55678. This meeting, scheduled to convene on September 29, 2011, is canceled due to scheduling conflict arising for the Subcommittee chair. Notice will be provided when the meeting is rescheduled in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Contact Person for More Information: Theodore M. Katz, M.P.A., Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, NE. *Mailstop:* E–20, Atlanta, Georgia 30333, Telephone: (513) 533–6800, Toll Free: 1–800–CDC–INFO, E-mail: *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: September 16, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–24541 Filed 9–22–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10102]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* National Implementation of Hospital Consumer

Assessment of Healthcare Providers and Systems (HCAHPS); *Use:* The HCAHPS (*Hospital Consumer Assessment of Healthcare Providers and Systems*) survey is the first national, standardized, publicly reported survey of patients' perspectives of hospital care. HCAHPS (pronounced ''*H-caps''*), also known as the CAHPS® Hospital Survey, is a survey instrument and data collection methodology for measuring patients' perceptions of their hospital experience. While many hospitals have collected information on patient satisfaction for their own internal use, until HCAHPS there was no national standard for collecting and publicly reporting information about patient experience of care that allowed valid comparisons to be made across hospitals locally, regionally and nationally.

Three broad goals have shaped HCAHPS. First, the survey is designed to produce data about patients' perspectives of care that allow objective and meaningful comparisons of hospitals on topics that are important to consumers. Second, public reporting of the survey results creates new incentives for hospitals to improve quality of care. Third, public reporting serves to enhance accountability in health care by increasing transparency of the quality of hospital care provided in return for the public investment. With these goals in mind, the Centers for Medicare & Medicaid Services (CMS) has taken substantial steps to assure that the survey is credible, useful, and practical. Hospitals implement HCAHPS under the auspices of the Hospital Quality Alliance (HQA), a private/public partnership that includes major hospital and medical associations, consumer groups, measurement and accrediting bodies, government, and other groups that share an interest in improving hospital quality. Both the HQA and the National Quality Forum have endorsed HCAHPS.

The enactment of the Deficit Reduction Act of 2005 created an additional incentive for acute care hospitals to participate in HCAHPS. Since July 2007, hospitals subject to the Inpatient Prospective Payment System (IPPS) annual payment update provisions (''subsection (d) hospitals'') must collect and submit HCAHPS data in order to receive their full IPPS annual payment update. IPPS hospitals that fail to publicly report the required quality measures, which include the HCAHPS survey, may receive an annual payment update that is reduced by 2.0 percentage points. Non-IPPS hospitals, such as Critical Access Hospitals, may voluntarily participate in HCAHPS.

The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) includes HCAHPS among the measures to be used to calculate value-based incentive payments in the Hospital Value-Based Purchasing program, beginning with discharges in October 2012.

Currently the HCAHPS survey asks discharged patients 27 questions about their recent hospital stay. The survey contains 18 core questions about critical aspects of patients' hospital experiences (communication with nurses and doctors, the responsiveness of hospital staff, the cleanliness and quietness of the hospital environment, pain management, communication about medicines, discharge information, overall rating of hospital, and would they recommend the hospital). The survey also includes four items to direct patients to relevant questions, three items to adjust for the mix of patients across hospitals, and two items that support Congressionally-mandated reports.

This revision is being submitted in order to add five new items to the survey: Three items that comprise a Care Transitions composite; one item that asks whether the patient was admitted through the emergency room; and one item that asks about the patient's overall mental health. This marks the first addition of items to the HCAHPS Survey since its national implementation in 2006. *Form Number:* CMS–10102 (OCN: 0938–0981); *Frequency:* Occasionally; *Affected Public:* Individuals or Households, Private Sector—Business or other for-profits and not-for-profit institutions. *Number of Respondents:* 2,713,812; *Total Annual Responses:* 2,713,812; *Total Annual Hours:* 365,136. (For policy questions regarding this collection contact William Lehrman at 410–786–1037. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *November 22, 2011:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 20, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–24522 Filed 9–22–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2375–FN]

Medicare and Medicaid Programs; Approval of the Joint Commission's Continued Deeming Authority for Critical Access Hospitals

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the Joint Commission for continued recognition as a national accreditation program for critical access hospitals (CAHs) seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective November 21, 2011 through November 21, 2017.

FOR FURTHER INFORMATION CONTACT:

L. Tyler Whitaker, (410) 786–5236.
Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH) provided certain requirements are met. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. The minimum requirements that a CAH must meet to participate in Medicare are set forth in regulations at 42 CFR part

485, subpart F. Conditions for Medicare payment for CAHs are set forth at § 413.70. Applicable regulations concerning provider agreements are located in 42 CFR part 489 and those pertaining to facility survey and certification are located in 42 CFR part 488, subparts A and B.

For a CAH to enter into a provider agreement with the Medicare program, a CAH must first be certified by a State survey agency as complying with the conditions or requirements set forth in section 1820 of the Act, and 42 CFR part 485 of the regulations. Subsequently, the CAH is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare requirements. However, there is an alternative to State compliance surveys. Certification by a nationally recognized accreditation program can substitute for ongoing State review.

Section 1865(a)(1) of the Act stipulates that, if a provider entity demonstrates through accreditation by an approved national accreditation organization (AO) that all applicable Medicare conditions are met or exceeded, we may ''deem'' those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation. A national AO applying for deeming authority under 42 CFR part 488, subpart A must provide us with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions.

Our regulations concerning reapproval of AO's are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require AO's to reapply for continued approval of deeming authority every 6 years, or sooner as we determine. The Joint Commission's term of approval as a recognized accreditation program for CAHs expires November 21, 2011.

We received a complete application from the Joint Commission for continued recognition as a national accrediting organization for CAHs on April 1, 2011. In accordance with the requirements at § 488.4 and § 488.8(d)(3), we published a proposed notice on May 13, 2011 (76 FR 30107). This final notice is required to be published no later than November 21, 2011.

II. Deeming Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for deeming authority is conducted in a timely manner. The statute provides us 210 calendar days after the date of receipt of a complete application, with any documentation necessary to make a determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice and Response to Comments

In the May 13, 2011 **Federal Register** (76 FR 28040), we published a proposed notice announcing the Joint Commission's request for continued approval as a deeming organization for critical access hospitals. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.4 we conducted a review of the Joint Commission's application in accordance with the criteria specified by our regulations, which include, but are not limited to, the following:

- An onsite administrative review of the Joint Commission's:
  - ++ Corporate policies.
  - ++ Financial and human resources available to accomplish the proposed surveys.
  - ++ Procedures for training, monitoring, and evaluation of its surveyors.
  - ++ Ability to investigate and respond appropriately to complaints against accredited facilities.
  - ++ Survey review and decision-making process for accreditation.
- A comparison of the Joint Commission's CAH accreditation standards to our current Medicare CAH conditions of participation (CoPs).
- A documentation review of the Joint Commission's survey processes to:
  - ++ Determine the composition of the survey team, surveyor qualifications, and the Joint Commission's ability to provide continuing surveyor training.
  - ++ Compare the Joint Commission's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
  - ++ Evaluate the Joint Commission's procedures for monitoring CAHs found to be out of compliance with the Joint Commission's program requirements. The monitoring procedures are used only when the Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).
  - ++ Assess the Joint Commission's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
  - ++ Establish the Joint Commission's ability to provide us with electronic data and reports necessary for effective validation and assessment of the Joint Commission's survey process.
  - ++ Determine the adequacy of staff and other resources.
  - ++ Review the Joint Commission's ability to provide adequate funding for performing required surveys.
  - ++ Confirm the Joint Commission's policies with respect to whether surveys are announced or unannounced.
  - ++ Obtain the Joint Commission's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the May 13, 2011 proposed notice also solicited public comments regarding whether the Joint Commission's requirements meet or exceed the Medicare CoPs for CAHs. We received one comment in response to our proposed notice.

The commenter expressed strong support for the Joint Commission's application for CAH deeming authority. The commenter stated that the Joint Commission's standards are clearly written and closely align with the Medicare CoPs, and that the Joint Commission's accreditation program provides CAHs with a viable alternative to other healthcare AOs.

IV. Provisions of the Final Notice

A. Differences Between the Joint Commission's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the Joint Commission's CAH accreditation requirements and survey process with the Medicare CoPs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of the Joint Commission's deeming application, which were conducted as described in section III of this final notice, yielded the following:

- To meet the requirements at § 485.618(c)(2), the Joint Commission revised its crosswalk to include the requirement that an organization's

medical staff and the person directly responsible for operation of the facility approve contractual agreements.

• To meet the requirements at § 485.623(b)(2), the Joint Commission revised its crosswalk and survey process to address the proper routine storage and prompt disposal of trash.

• To meet the requirements at § 485.631(c)(2), the Joint Commission revised its crosswalk to address the requirement that physician assistants, nurse practitioners, or clinical nurse specialists provide services in accordance with the CAH's policies.

• To meet the requirements at § 485.635(a)(3)(iii), the Joint Commission revised its standards to include guidelines for the maintenance of health care records, and procedures for the periodic review and evaluation of the services furnished by the CAH.

• To meet the requirements at § 485.635(f) through (f)(2), the Joint Commission revised its crosswalk to include the patient visitation right standards and related survey process revisions.

• To meet the requirements at § 485.638(a)(2), the Joint Commission revised its crosswalk to address the requirement that medical records are readily accessible.

• To meet the requirements at § 485.639(b)(1), the Joint Commission revised its standards to include the requirement that a qualified practitioner must examine the patient immediately before surgery to evaluate the risk of the procedure to be performed.

• To meet the requirements at § 485.639(b)(2), the Joint Commission revised its standards to include the requirement that a qualified practitioner examine each patient before surgery to evaluate the risk of anesthesia.

• To meet the requirements at § 485.639(b)(3), the Joint Commission revised its standards to address the requirement that a qualified practitioner must evaluate each patient for proper anesthesia recovery before discharge from the CAH.

• To meet the requirements at § 485.643(f), the Joint Commission revised its glossary to ensure that the definition of organ includes ''intestines (or multivisceral organs).''

• To meet the requirements at § 485.645(d)(1), the Joint Commission revised its crosswalk to include standards which address the residents' right to send and receive mail that is not opened.

• To meet the requirements at § 412.27(d)(6)(i), the Joint Commission revised its crosswalk to include the requirement that programs be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

• To meet the requirements at § 412.29(c), the Joint Commission revised it crosswalk to include standards to ensure patients receive social services, psychological services (including neuropsychological services), orthotic and prosthetic services, as needed.

• To meet the requirements at § 482.13(h) through (h)(4), the Joint Commission revised its crosswalk to include the patient visitation right standards and related survey process revisions.

• To meet the requirements at § 482.30(d)(3), the Joint Commission revised its standards to ensure that written notification regarding the admission to or continued stay in the hospital when it is not medically necessary, is given no later than 2 days after this determination has been made.

• To meet the requirements at § 482.41(b)(1)(i), the Joint Commission revised its standards to require quarterly testing of tamper and water flow devices.

• To meet the requirements at § 482.41(b)(8), the Joint Commission revised its standards to ensure the CAH maintains written evidence of regular inspections and approval by State or local fire control agencies for the entire CAH.

• To meet the requirements at § 482.51, the Joint Commission revised its standards to ensure that if the hospital provides surgical services, the services are well organized and provided in accordance with acceptable standards of practice and if outpatient surgical services are offered the services must be consistent in quality with inpatient care in accordance with the complexity of services offered.

• To meet the requirements at § 488.4(a)(7), the Joint Commission revised its survey process to include policies and procedures with respect to the withholding or removal of accreditation status or requirements, and other actions taken by the Joint Commission in response to noncompliance with standards and requirements.

• To meet the requirements at section 2728 of the State Operations Manual (SOM), the Joint Commission modified its policies regarding timeframes for sending and receiving a plan of correction (PoC).

• To meet the requirements at § 488.12, the Joint Commission modified its policies and procedures to ensure its survey files are complete.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that the Joint Commission's requirements for CAHs meet or exceed our requirements. Therefore, we approve the Joint Commission as a national accreditation organization for CAHs that request participation in the Medicare program, effective November 21, 2011 through November 21, 2017.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 31, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–24496 Filed 9–22–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2377–PN]

Medicare and Medicaid Programs; Application by Community Health Accreditation Program for Continued Deeming Authority for Home Health Agencies

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of a deeming application from the Community Health Accreditation Program (CHAP) for continued recognition as a national accrediting organization for home health agencies (HHAs) that wish to participate in the Medicare or Medicaid programs. Section 1865(a)(3)(A) of the Social Security Act (the Act) requires that within 60 days of receipt of an organization's complete application, we publish a notice that

identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 24, 2011.

ADDRESSES: In commenting, please refer to file code CMS–2377–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address *only:*

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2377–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address *only:*

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2377–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Lillian Williams, (410) 786–8636.
Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a home health agency (HHA) provided certain requirements are met. Sections 1861(m) and (o), 1891 and 1895 of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as an HHA. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR parts 409 and 484 specify the conditions that an HHA must meet to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for home health care.

Generally, to enter into a provider agreement with the Medicare program, an HHA must first be certified by a State survey agency as complying with the conditions or requirements set forth in 42 CFR part 484 of our regulations. Thereafter, the HHA is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements.

However, there is an alternative to surveys by State agencies. Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under 42 CFR part 488, subpart A must provide CMS with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the reapproval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued deeming authority every 6 years or sooner as determined by CMS.

The CHAP'S term of approval as a recognized accreditation program for HHA's expires March 31, 2012.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and reapproval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: Requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice

identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of CHAP's request for continued deeming authority for HHAs. This notice also solicits public comment on whether CHAP's requirements meet or exceed the Medicare conditions for participation for HHAs.

III. Evaluation of Deeming Authority Request

CHAP submitted all the necessary materials to enable us to make a determination concerning its request for reapproval as a deeming organization for HHAs. This application was determined to be complete on August 26, 2011. Under section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of CHAP will be conducted in accordance with, but not necessarily limited to, the following factors:

• The equivalency of CHAP'S standards for HHA's as compared with CMS' HHA conditions of participation.

• CHAP's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of CHAP's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ CHAP's processes and procedures for monitoring HHAs found out of compliance with CHAP's program requirements. These monitoring procedures are used only when CHAP identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

++ CHAP's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ CHAP's capacity to provide us with electronic data, and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of CHAP's staff and other resources, and its financial viability.

++ CHAP's capacity to adequately fund required surveys.

++ CHAP's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ CHAP's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice, and, we will respond to the comments in a subsequent document.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 31, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–24547 Filed 9–22–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4152–N]

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2012. The calendar year 2012 AIC threshold amounts are $130 for ALJ hearings and $1,350 for judicial review.

DATES: *Effective Date:* This notice is effective on January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Liz Hosna (*Katherine.Hosna@cms.hhs.gov*), (410) 786–4993.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act), as amended by section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), established the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearing requests and judicial review at $100 and $1000, respectively, for Medicare Part A and Part B appeals. Section 940 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), amended section 1869(b)(1)(E) of the Act to require the AIC threshold amounts for ALJ hearings and judicial review to be adjusted annually. The AIC threshold amounts are to be adjusted, as of January 2005, by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10. Section 940(b)(2) of the MMA provided conforming amendments to apply the AIC adjustment requirement to Medicare Part C Medicare Advantage (MA) appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement. Section 101 of the MMA provides for the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR 405.1006(b) and (c). The regulations require the Secretary of the Department of Health and Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register** (405.1006(b)(2)). In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(b). Similarly, a party must meet the AIC requirements at 405.1006(c) at the time judicial review

is requested for the court to have jurisdiction over the appeal (405.1136(a)).

B. Medicare Part C (Medicare Advantage) Appeals

Section 940(b)(2) of the MMA applies the AIC adjustment requirement to Medicare Part C (MA) appeals by amending section 1852(g)(5) of the Act. The implementing regulations for Medicare Part C (MA) appeals are found at 42 CFR part 422, Subpart M. Specifically, 422.600 and 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 422.600 grants any party to the reconsideration, except the MA organization, who is dissatisfied with the reconsideration determination, a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states, in part, that any party, including the MA organization, may request judicial review if, the AIC meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 1876(c)(5)(B) of the Act states that the annual adjustment to the AIC dollar amounts set forth in section 1869(b)(1)(E) of the Act applies to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR part 422, Subpart M, and as discussed previously, apply to these appeals. The Medicare Part C appeals rules also apply to health care prepayment plan appeals.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 101 of the MMA added section 1860D–4(h)(1) of the Act regarding Part D appeals. This statutory provision requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. As noted previously, the annually adjusted AIC threshold requirement was added to section 1852(g)(5) of the Act by section 940(b)(2)(A) of the MMA. The implementing regulations for Medicare Part D appeals can be found at 42 CFR part 423, Subparts M and U. The regulations at § 423.562(c) prescribe that, unless the Part D appeals rules provide otherwise, the Part C appeals rules (including the annually adjusted AIC threshold amount) apply to Part D appeals to the extent they are appropriate. More specifically, 423.1970 and 423.1976 of the Part D appeals rules discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 423.1970(a) grants a Part D enrollee, who is dissatisfied with the independent review entity (IRE) reconsideration determination, a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary. Section 423.1976(a) and (b) allow a Part D enrollee to request judicial review of an ALJ or MAC decision if, in part, the AIC meets the threshold amount established annually by the Secretary.

II. Annual AIC Adjustments

A. AIC Adjustment Formula and AIC Adjustments

As previously noted, section 940 of the MMA requires that the AIC threshold amounts be adjusted annually, beginning in January 2005, by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10.

B. Calendar Year 2012

The AIC threshold amount for ALJ hearing requests will remain at $130 and the AIC threshold amount for judicial review will rise to $1,350 for CY 2012. These updated amounts are based on the 34.51 percent increase in the medical care component of the CPI from July 2003 to July 2011. The CPI level was at 297.600 in July 2003 and rose to 400.305 in July 2011. This change accounted for the 34.51 percent increase. The AIC threshold amount for ALJ hearing requests changes to $134.51 based on the 34.51 percent increase. In accordance with section 940 of the MMA, this amount is rounded to the nearest multiple of $10. Therefore, the 2012 AIC threshold amount for ALJ hearings is $130. The AIC threshold amount for judicial review changes to $1,345.11 based on the 34.51 percent increase. This amount was rounded to the nearest multiple of $10, resulting in the 2012 AIC threshold amount of $1,350 for judicial review.

C. Summary Table of Adjustments in the AIC Threshold Amounts

In the following table we list the CYs 2005 through 2012 threshold amounts.

	CY 2005	CY 2006	CY 2007	CY 2008	CY 2009	CY 2010	CY 2011	CY 2012
ALJ Hearing	$100	$110	$110	$120	$120	$130	$130	$130
Judicial Review	1,050	1,090	1,130	1,180	1,220	1,260	1,300	1,350

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 8, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–24539 Filed 9–22–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0481]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; New Animal Drugs for Investigational Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 24, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0117. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Animal Drugs for Investigational Uses—21 CFR Part 511 (OMB Control Number 0910–0117)—Extension

FDA has the authority under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to approve new animal drugs. Section 512(j) of the FD&C Act (21 U.S.C. 360b(j)), authorizes FDA to issue regulations relating to the investigational use of new animal drugs. The regulations setting forth the conditions for investigational use of new animal drugs have been codified at part 511 (21 CFR part 511). If the new animal drug is only for tests in vitro or in laboratory research animals, the person distributing the new animal drug must maintain records showing the name and post office address of the expert or expert organization to whom it is shipped and the date, quantity, and batch or code mark of each shipment and delivery for a period of 2 years after such shipment or delivery. Before shipping a new animal drug for clinical investigations in animals, a sponsor must submit to FDA a Notice of Claimed Investigational Exemption (NCIE). The NCIE must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any non-clinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5) the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6) information regarding the use of edible tissues from investigational animals. Part 511 also requires that records be established and maintained to document the distribution and use of the investigational drug to assure that its use is safe, and that the distribution is controlled to prevent potential abuse. The agency uses these required records under its Bio-Research Monitoring Program to monitor the validity of the studies submitted to FDA to support new animal drug approval and to assure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are used primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities as well as research firms and members of the medical profession. Respondents to this collection of information are the persons who use new animal drugs for purposes of an investigation.

In the **Federal Register** of June 28, 2011 (76 FR 37814), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Part	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
511.1(b)(4)	206	6.01	1,238	1	1,238
511.1(b)(5)	206	.34	70	8	560
511.1(b)(6)	206	.01	2	1	2
511.1(b)(8)(ii)	206	.07	15	2	30
511.1(b)(9)	206	.07	15	8	120
Total					1,950

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
511.1(a)(3)	206	2.30	473	1	473
511.1(b)(3)	206	6.01	1,238	1	1,238
511.1(b)(7)(ii)	206	6.01	1,238	3.5	4,333
511.1(b)(8)(i)	206	6.01	1,238	3.5	4,333
Total Burden Hours					10,377

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for reporting requirements, record preparation, and maintenance for this collection of information is based on agency communication with industry. Based on the number of sponsors

subject to animal drug user fees, FDA estimates that there are 206 respondents. We use this estimate consistently throughout the table and calculate the ''annual frequency per respondent'' by dividing the total annual responses by number of respondents. Additional information needed to make a final calculation of the total burden hours (*i.e.,* the number of respondents, the number of record keepers, the number of NCIEs received, *etc.*) is derived from agency records.

Dated: September 19, 2011.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2011–24433 Filed 9–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0651]

Determination That LOXITANE (Loxapine Succinate) Capsules and Three Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the four drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Olivia Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6308, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is withdrawn from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved; (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved; and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed.

Application No.	Drug	Applicant
NDA 017525	LOXITANE (loxapine succinate) Capsules, Equivalent to (EQ) 5 milligram (mg) base, EQ 10 mg base, EQ 25 mg base, and EQ 50 mg base.	Watson Laboratories Inc., 417 Wakara Way, Suite 100, Salt Lake City, UT 84108.
NDA 017525	LOXITANE (loxapine succinate) Tablets, EQ 10 mg base, EQ 25 mg base, and EQ 50 mg base.	Do.
NDA 020403	ZOFRAN AND DEXTROSE IN PLASTIC CONTAINER (ondansetron hydrochloride) Injection, EQ 0.64 mg/milliliter.	GlaxoSmithKline, 5 Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709–3398.
NDA 020828	FORTOVASE (saquinavir) Capsule, 200 mg	Hoffmann La Roche Inc., 340 Kingsland St., Nutley, NJ 07110.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: September 14, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24402 Filed 9–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1999–N–0082 (Formerly Docket No. 1999N–2079)]

Guidance for Industry on Reproductive and Developmental Toxicities—Integrating Study Results To Assess Concerns; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Reproductive and Developmental Toxicities—Integrating Study Results to Assess Concerns.'' This guidance describes an approach to estimating possible human developmental or reproductive risks associated with drug or biological product exposure when a nonclinical finding of toxicity has been identified, but definitive human data are unavailable. The guidance is intended for drug developers planning to submit new drug applications (NDAs) and biologics licensing applications (BLAs), and who are assessing nonclinical toxicity information.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Abigail Jacobs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg 22, Rm. 6484, Silver Spring, MD 20993–0002, 301–796–0174.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Reproductive and Developmental Toxicities—Integrating Study Results to Assess Concerns.'' This guidance describes an approach to estimating possible human developmental or reproductive risks associated with drug or biological product exposure when a finding of toxicity has been identified, but definitive human data are unavailable. The guidance is intended for drug developers intending to submit NDAs and BLAs, and who are assessing nonclinical toxicity information. The recommendations included here will also help to ensure a consistent review of reproductive and developmental toxicity data among Center for Drug Evaluation and Research review staff.

This guidance does not: (1) Give detailed advice about labeling or placement of toxicity information in product labeling (for information on labeling, see 21 CFR 201.57); or (2) discuss clinical data, the integration of nonclinical and clinical data, or the clinical implications of these data.

The approach presented here for assessing nonclinical reproductive and developmental toxicity data involves the integration and careful consideration of a variety of different types of nonclinical information: Reproductive toxicology; general toxicology; and toxicokinetic and pharmacokinetic information, including absorption, distribution, metabolism, and elimination findings. The approach is used when there is a toxicity finding and focuses on assessing the likelihood that a drug will increase the risk of adverse human developmental or reproductive outcomes. The approach includes noting when studies were not conducted or when they were not performed using relevant model systems or at appropriate dose ranges.

On November 13, 2001 (66 FR 56830), FDA issued a draft of this guidance. Comments were received and carefully considered during the finalization of the guidance. Most changes to the document are editorial. However, one important change has been made. The description of a process that involved assignment of values of +1, −1 or 0 to the various factors was removed from the guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on integration of study results to assess concerns about human reproductive and developmental toxicities. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 19, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24431 Filed 9–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Joint Meeting of the Advisory Committee for Reproductive Health Drugs and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Advisory Committee for Reproductive Health Drugs and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 9, 2011, from 8 a.m. to 5 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland University College (UMUC), The Ballroom, 3501 University Blvd.,

East, Adelphi, MD. The conference center telephone number is 301–985–7300.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *ACRHD@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 9, 2011, the committees will discuss the benefits and risks of ORTHO EVRA (norelgestromin/ethinyl estradiol transdermal system), marketed by Janssen Pharmaceuticals, Inc., for the prevention of pregnancy. Specifically, the committees will discuss the possibly increased risk of thrombotic (blood clots) and thromboembolic events (blood clots that can break loose and move within the circulatory system) in users of ORTHO EVRA compared to women who use commonly prescribed birth control pills, as suggested by postmarketing studies.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 23, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 15, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 16, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 19, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–24533 Filed 9–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Joint Meeting of the Advisory Committee for Reproductive Health Drugs and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Advisory Committee for Reproductive Health Drugs and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 8, 2011, from 8 a.m. to 5 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland University College, The Ballroom, 3501 University Blvd. East, Adelphi, MD. The conference center telephone number is 301–985–7300.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, e-mail: *ACRHD@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 8, 2011, the committees will discuss the benefits and risks of drospirenone-containing oral contraceptives in light of the emerging safety concern that the risk of venous thromboembolism (blood clots that can break loose and move within the circulatory system) associated with use of these products may be higher compared to oral contraceptives that contain the progestin, levonorgestrel. Drospirenone-containing oral contraceptives for the primary indication of pregnancy prevention include: YASMIN, YAZ (drospirenone/ethinyl estradiol tablets), BEYAZ, SAFYRAL (drospirenone/ethinyl estradiol/levomefolate calcium tablets and levomefolate calcium tablets), Bayer HealthCare, and the generic equivalents for these products.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the

meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 23, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 15, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 16, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 20, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–24532 Filed 9–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0318]

Novartis Pharmaceuticals Corp. et al.; Withdrawal of Approval of 27 New Drug Applications and 58 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 21, 2010 (75 FR 42455). The document withdrew approval of 27 new drug applications (NDAs) and 58 abbreviated new drug applications (ANDAs) from multiple applicants. The published document excluded a footnote in the table. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3208, Silver Spring, MD 20993–0002, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2010–17785, appearing on page 42455, in the **Federal Register** of Wednesday, July 21, 2010, the following correction is made:

1. On page 42456, in Table 1, under the ''Drug'' column, correct the entry for ''Proventil (albuterol USP) Inhalation Aerosol'' to read ''Proventil (albuterol USP) Inhalation Aerosol [1]''.

2. On page 42456, at the end of the table, add footnote number 1 to read:

This product included an oral pressurized metered-dose inhaler that contained chlorofluorocarbons (CFCs) as a propellant. CFCs may no longer be used as a propellant for any albuterol metered-dose inhalers. (See 70 FR 17168, April 4, 2005.)

Dated: September 19, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–24400 Filed 9–22–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank; Name Change of Proactive Disclosure Service (PDS) to Continuous Query

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: On March 7, 2007, the Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS), published in the **Federal Register** a notice announcing the implementation of a prototype for querying the National Practitioner Data Bank (NPDB), then known as Proactive Disclosure Service (PDS). This notice announces that the prototype status is removed and that PDS is now known as Continuous Query.

DATES: The effective date of this status upgrade and name change is September 23, 2011.

FOR FURTHER INFORMATION CONTACT: Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 8–103, Rockville, MD 20857; telephone number: (301) 443–2300.

SUPPLEMENTARY INFORMATION:

I. Background

On March 7, 2007, the National Practitioner Data Bank (NPDB) published in the **Federal Register** (72 FR 10227) a notice announcing a Proactive Disclosure Service (PDS) prototype. The PDS was offered as an alternative to the traditional querying of the NPDB and allowed for on-going monitoring of a practitioner's credentials. PDS is a subscription service that notifies subscribers, which are registered entities that are eligible to query the NPDB or the Healthcare Integrity and Protection Data Bank (HIPDB), of new information on any of their enrolled practitioners within 24 hours of the NPDB or HIPDB receipt of the information. The PDS prototype was available for enrollment beginning on April 30, 2007 to a select group of NPDB registered entities. A few months later PDS was opened to all NPDB registered entities, as well as to those registered in the HIPDB. In the last year (July 1, 2010 through June 30, 2011), 1,965 entities had practitioner enrollments through PDS versus 14,370 entities that submitted traditional queries on

practitioners in the NPDB. Unlike a traditional query, PDS enrolled practitioners are continuously monitored and subscribed entities need not pay for multiple queries each time they want to access new information on a practitioner. The following table charts the growth of PDS enrollments beginning in June 2007 through June 2010 for the NPDB and the HIPDB:

NUMBER OF PRACTITIONERS ENROLLED IN PDS

Month/year	NPDB	HIPDB
June 2010	481,794	125,649
June 2009	311,275	101,720
June 2008	113,631	12,592
June 2007	47,641	2,005

The number of enrollments is steadily climbing and re-enrollment rates for this service are approximately 90 percent. This service is quickly becoming the benchmark for monitoring practitioner credentials because it is designed and developed to meet new accreditation standards that require on-going monitoring of practitioners. In light of these developments, HRSA is making this service a permanent feature. The name change from PDS to Continuous Query better captures the true nature of this service, which is the continuous monitoring of enrolled practitioners.

All aspects of the PDS querying service as described in the March 7, 2007 notice are still in effect except for the upgrade from prototype to permanent status and the name change set forth in this notice.

II. Revisions to Previous Notice

This notice is to inform the public that the prototype status for PDS is removed and that the name of the PDS querying service has been changed to Continuous Query.

Dated: September 16, 2011.

Mary K. Wakefield,

Administrator, Health Resources and Services Administration.

[FR Doc. 2011–24403 Filed 9–22–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NINR End-of-Life and Palliative Care Science Needs Assessment: Funding Source (Survey of Authors)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Nursing (NINR), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This information collection was previously published in the **Federal Register** on June 16, 2011, page 35221 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

5 CFR 1320.5 (General requirements) Reporting and Recordkeeping Requirements: Final Rule requires that the agency inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. This information is required to be stated in the 30-day **Federal Register** Notice.

Proposed Collection: Title: NINR End-of-Life and Palliative Care Science Needs Assessment: Funding Source (Survey of Authors). *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The NINR End-of-Life Science Palliative Care (EOL PC) Needs Assessment: Funding Source Questionnaire will obtain information on funding sources of EOL PC research published studies for which a funding source is not cited or the information is unclear. Target participants are authors of publicly-available EOL PC research studies published between 1997–2010 for whom a funding source is unknown or unclear. The questionnaire inquires about the funding source of the published study, type of funding received, year of funding, and duration of funded study. This is a 7-item questionnaire that takes approximately 5 minutes to complete. Data collected is part of a needs assessment to address the breadth and depth of EOL PC scientific issues for use in stimulating research capacity in the field. *Frequency of Response:* One time. *Affected Public:* Individual authors of publicly available EOL PC research publications who do not list a funding source or the source is unclear within their publication. *Type of Respondents:* EOL PC researchers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1840; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .08; and *Estimated Total Annual Burden Hours Requested:* 147. There are no Capital Costs, Operating or Maintenance Costs to report.

Request for comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Amanda Greene, Office of Science Policy and Public Liaison, NINR, NIH, Democracy One, 6701 Democracy Blvd., Suite 710, Bethesda, MD 20892 or call non-toll-free number (301) 496–9601 or E-mail your request, including your address to: *amanda.greene@nih.gov.*

Comments due date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: September 16, 2011.

Amanda Greene,

Science Evaluation Officer, NINR, National Institutes of Health.

[FR Doc. 2011–24510 Filed 9–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK STEP–UP (R25).

Date: November 15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Ann A. Jerkins, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Member Conflicts SEP.

Date: November 28, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24508 Filed 9–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: October 20–21, 2011.

Time: 9 a.m. to 12 p.m.

Agenda: The purpose of the meeting will be for the Committee to provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www4.od.nih.gov/orwh/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24505 Filed 9–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical and Translational Imaging Applications.

Date: October 17, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk, Prevention and Intervention for Addictions: Overflow.

Date: October 21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Kristen Prentice, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24503 Filed 9–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: October 20, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available via *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: November 10, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available via *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: November 29, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available via *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 15, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–24501 Filed 9–22–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0705]

Merchant Marine Personnel Advisory Committee, Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting; correction.

SUMMARY: On August 16, 2011 (76 FR 50744), the Coast Guard published a notice of meeting for the Merchant Marine Personnel Advisory Committee in the **Federal Register**. The Merchant Marine Personnel Advisory Committee was unable to complete all agenda items during a two day working group meeting on September 8–9, 2011 therefore, Coast Guard is adding a day to the meeting. This notice corrects the August 16, 2011 (76 FR 50744) **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Mr. Rogers Henderson, Maritime Personnel Qualification Division, U.S. Coast Guard, telephone 202–372–1408, e-mail *Rogers.W.Henderson@uscg.mil.*

SUPPLEMENTARY INFORMATION: On August 16, 2011 (76 FR 50744), the Coast Guard published a notice of meeting for the Merchant Marine Personnel Advisory Committee (MERPAC) on October 6–7, 2011, in the **Federal Register**. The Merchant Marine Personnel Advisory Committee was unable to complete all agenda items during a two day working group meeting on September 8–9, 2011. Therefore, Coast Guard is adding a day to the October meeting to allow the working group to complete its agenda items prior to the full MERPAC meeting. Subsequent to the publication of that notice, the Coast Guard realized that another day and an agenda needed to be added.

Correction

In the **Federal Register** of August 16, 2011, in FR Doc. 2011–20826:

1. On page 50744, in the second column, correct the **SUMMARY** to read: ''The Merchant Marine Personnel Advisory Committee (MERPAC) will meet on October 5, 2011, October 6, 2011 and October 7, 2011 in Washington, DC to discuss various issues related to the training and fitness of merchant marine personnel. This meeting will be open to the public.''

2. On page 50744, in the third column, correct the first sentence of the DATES section to read: ''MERPAC working groups will meet on October 5, 2011, from 8 a.m. until 5 p.m., October 6, 2011, from 8 a.m. until 4 p.m., and

the full committee will meet on October 7, 2011, from 8 a.m. until 4 p.m.''

3. On page 50744, in the third column, correct the first sentence of the **ADDRESSES** section to read: ''The Committee will meet in Room 2501 and 4202 of Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.''

4. On page 50745, in the first column, add the following after the *Agenda of Meeting* caption:

Day 1 The agenda for the October 5, 2011, meeting is as follows:

(1) A working group will meet to discuss and prepare proposed recommendations for the full committee to consider concerning Task Statement 75, entitled, ''Review of the Supplemental Notice of Proposed Rulemaking Concerning the Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to Domestic Endorsements;''

(2) Public comment period; and

(3) Adjournment of meeting.

5. On page 50745, in the first column, correct ''Day 1'' to read ''Day 2''.

6. On page 50745, in the second column, correct ''Day 2'' to read ''Day 3''.

Dated: September 20, 2011.

Kathryn Sinniger,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2011–24579 Filed 9–21–11; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3339–EM; Docket ID FEMA–2011–0001]

Pennsylvania; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Pennsylvania (FEMA–3339–EM), dated August 29, 2011, and related determinations.

DATES: *Effective Date:* September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 14, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24452 Filed 9–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3309–EM; Docket ID FEMA–2011–0001]

North Dakota; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of North Dakota (FEMA–3309–EM), dated March 14, 2010, and related determinations.

DATES: *Effective Date:* September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Deanne Criswell, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24453 Filed 9–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 1, 2011.

Grand Isle County for Public Assistance, including direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24448 Filed 9–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4029–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4029–DR), dated September 9, 2011, and related determinations.

DATES: *Effective Date:* September 16, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 9, 2011.

Gregg, Grimes, Montgomery, Walker, and Waller Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24446 Filed 9–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1981–DR; Docket ID FEMA–2011–0001]

North Dakota; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of North Dakota (FEMA–1981–DR), dated May 10, 2011, and related determinations.

DATES: *Effective Date:* September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Deanne Criswell, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24450 Filed 9–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4029–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4029–DR), dated September 9, 2011, and related determinations.

DATES: *Effective Date:* September 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 9, 2011.

Colorado, Houston, Leon, Travis, and Williamson Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant).

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–24447 Filed 9–22–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Brenda Carignan, Department of Agriculture, Reporting Building, 300 7th Street, SW., Room 337, Washington, DC 20024: (202) 401–0787; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. John E.B. Smith, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street, NW., Room 7040, Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave., NW., 4th Floor, Washington, DC 20006: (202) 254–5522;

Navy: Mr. Albert Johnson, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305 (These are not toll-free numbers).

Dated: September 15, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/23/2011

Suitable/Available Properties

Building

Colorado

Residence #2
Weld Country Rd.
Nunn CO 80648
Landholding Agency: Agriculture
Property Number: 15201130001
Status: Excess
Comments: 1,890 sq. ft.; recent use: residential.

Montana

Swan Lake Guard Station
MP69 HWY 83 South
Swan Lake MT 55911
Landholding Agency: GSA
Property Number: 54201130004
Status: Surplus
GSA Number: 7–A–MT–0514–2
Comments: Off-site removal only; 615 sq. ft, recent use: office space.

Rising Sun Boat
St. Mary Lake Glacier Nat'l Park
St. Mary Lake MT 59911
Landholding Agency: GSA
Property Number: 54201130005
Status: Surplus
GSA Number: 7–I–MT–0544–3
Comments: Off-site removal only; 358 sq. ft.; recent use: ticket office.

Kalispell Shop
1899 Airport Rd.

Kalispell MT 59901
Landholding Agency: GSA
Property Number: 54201130006
Status: Surplus
GSA Number: 7–A–MT–0632
Comments: Off-site removal only; 560 sq. ft.; recent use: storage bldg.

Rhode Island

FDA Davisville Site
113 Bruce Boyer Street
North Kingstown RI 02852
Landholding Agency: GSA
Property Number: 54201130008
Status: Excess
GSA Number: 1–F–RI–0520
Comments: 4,100 sq. ft.; recent use: storage; property currently has no heating (all repairs is the responsibility of owner).

Suitable/Unavailable Properties

Building

Alaska

Dalton-Cache Border Station
Mile 42 Haines Highway
Haines AK 99827
Landholding Agency: GSA
Property Number: 54201010019
Status: Excess
GSA Number: 9–G–AK–0833
Directions: Bldgs. 1 and 2
Comments: 1,940 sq. ft., most recent use-residential and off-site removal only.

Kansas

MKC Outer Marker FAA Site
Generally South of 2400 Steele Road
Kansas City KS 64106
Landholding Agency: GSA
Property Number: 54201120007
Status: Surplus
GSA Number: 7–U–KS–0525
Comments: 60 sq. ft., current use: support building, public road easement.

Ohio

LTC Dwite Schaffner
U.S. Army Reserve Center
1011 Gorge Blvd.
Akron OH 44310
Landholding Agency: GSA
Property Number: 54201120006
Status: Excess
GSA Number: 1–D–OH–836
Comments: 25,039 sq. ft., most recent use: Office; in good condition.

Texas

FAA RML Facility
11262 N. Houston Rosslyn Rd.
Houston TX 77086
Landholding Agency: GSA
Property Number: 54201110016
Status: Surplus
GSA Number: 7–U–TX–1129
Comments: 448 sq. ft., recent use: Storage, asbestos has been identified in the floor.

Rattle Snake Scoring Ste.
1085 County Rd. 332
Pecos TX 79772
Landholding Agency: GSA
Property Number: 54201120005
Status: Excess
GSA Number: 7–D–TX–0604–AM
Comments: 8,396 sq. ft., most recent use: Training ste., previously reported by Air Force and deemed ''unsuitable'' because property was in a secured area and published in May 2009.

Virginia

Hampton Rds, Shore Patrol Bldg
811 East City Hall Ave
Norfolk VA 23510
Landholding Agency: GSA
Property Number: 54201120009
Status: Excess
GSA Number: 4–N–VA–758
Comments: 9,623 sq. ft.; current use: Storage, residential.

Land

Colorado

Common Pt. Shooting Rng.
Bureau of Reclamation
Drake CO 80515
Landholding Agency: GSA
Property Number: 54201120003
Status: Excess
GSA Number: 7–1–CO–0678
Comments: 35.88 acres; If the purchaser ceases using the property as a firing range they will be held to a higher standard of lead remediation by the local and Federal environmental protection agencies.

Louisiana

Almonaster
4300 Almonaster Ave.
New Orleans LA 70126
Landholding Agency: GSA
Property Number: 54201110014
Status: Surplus
GSA Number: 7–D–LA–0576
Comments: 9.215 acres.

Unsuitable Properties

Building

New Mexico

15 Bldgs.
Los Alamos Nat'l Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201130005
Status: Unutilized
Directions: 03–0782, 03–1549, 03–1550, 03–2018, 35–0261, 35–0262, 35–0263, 43–0024, 46–0181, 53–0404, 53–0889, 53–0773, 54–0283, 54–1009, 55–0099
Reasons: Extensive deterioration, Secured Area.

Virginia

Quarters 209
10800 George Wash. Memorial Hwy
Yorktown VA 23690
Landholding Agency: Interior
Property Number: 61201130001
Status: Excess
Reasons: Extensive deterioration.

Quarters 249
115 Jefferson Street
Williamsburg VA 23690
Landholding Agency: Interior
Property Number: 61201130002
Status: Excess
Reasons: Extensive deterioration.

Bldg. A128
Naval Station Norfolk
Norfolk VA 23511
Landholding Agency: Navy
Property Number: 77201130017
Status: Unutilized
Reasons: Extensive deterioration, Secured Area.

Land

Utah

Tract 962
Old AEC Mill Site
Monticello UT 84535
Landholding Agency: GSA
Property Number: 54201130007
Status: Surplus
GSA Number: 7–B–UT–431–AQ
Reasons: Other—Landlocked Not accessible by road.

[FR Doc. 2011–24150 Filed 9–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–24]

Announcement of Funding Awards; HOPE VI Main Street Grant Program, Fiscal Year (FY) 2009

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY2009 Notice of Funding Availability (NOFA) for the HOPE VI Main Street Program. This announcement contains the consolidated names and addresses of the award recipients under said NOFA.

FOR FURTHER INFORMATION CONTACT: Lawrence Gnessin, HOPE VI Main Street Program Manager, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 2010, e-mail *lawrence.gnessin@hud.gov,* and telephone number 202–402–2676. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339

SUPPLEMENTARY INFORMATION: The program authority for the HOPE VI Main Street program is Section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), as amended by Section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), the HOPE VI Program Reauthorization and Small Community

Mainstreet Rejuvenation and Housing Act of 2003 (Pub. L. 108–186, 117 Stat. 2685, approved December 16, 2003); and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009). The purpose of the HOPE VI Main Street program is to provide grants to small communities to assist in the rejuvenation of an historic or traditional central business district or ''Main Street'' area by replacing unused commercial space in buildings with affordable housing units. The objectives of the program are to (1) redevelop Main Street areas; (2) preserve historic or traditional architecture or design features in Main Street areas; (3) enhance economic development efforts in Main Street areas; and (4) provide affordable housing in Main Street areas.

On November 11, 2009, HUD posted its FY2009 Main Street Grants program NOFA to Grants.gov. This made approximately $4 million in assistance available for the competition. Prior to the application due date, the Department added $1.5 million to the competition from assistance appropriated by the Department of Housing and Urban Development Consolidated Appropriations Act, 2010 (Pub. L. 111–117 approved December 16, 2009). The Department reviewed, evaluated and scored the applications received based on the criteria in the FY2009 NOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the five (5) awards made under FY 2009–10 HOPE VI Main Street NOFA.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

Appendix A

HOPE VI MAIN STREET GRANT PROGRAM AWARDS FROM THE FISCAL YEAR NOTICE OF FUNDING AVAILABILITY

Recipient	Amount awarded
Municipality of Coamo, PR, Mario Braschi and Baldorioty Street, P.O. Box 1875, Coamo, PR 00769	$ 650,000
City of Hawkinsville, GA, 319 Broad, P.O. Box 120, Hawkinsville, GA 31036	1,000,000
City of Marshalltown, IA, 24 North Center Street, Marshalltown, IA 50158	1,000,000
City of Martin, SD, 101 Main Street, P.O. Box 687, Martin, SD 57551	977,500
City of Borough of Wrangell, AK, 205 Brueger Street, P.O. Box 531, Wrangell, AK 99929	869,000

[FR Doc. 2011–24399 Filed 9–22–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5500–FA–12]

Announcement of Funding Awards for the Section 4 Capacity Building for Community Development and Affordable Housing Program Fiscal Year 2011

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the 2010 Notice of Funding Availability (NOFA) for the Section 4 Capacity Building for Community Development and Affordable Housing grants program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Karen E. Daly, Director, Office of Policy Development and Coordination, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7240, Washington, DC 20410–7000; telephone (202) 402–5552 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at (800) 877–8339. For general information on this and other HUD programs, call Community Connections at (800) 998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: HUD's Capacity Building for Community Development and Affordable Housing program is authorized by Section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 107 Stat. 1148, 42 U.S.C. 9816 note), as amended, and the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). The Section 4 Capacity Building program provides grants to national community development intermediaries to enhance the capacity and ability of community development corporations and community housing development organizations to carry out community development and affordable housing activities that benefit low-income families and persons. Capacity Building funds support activities such as training, education, support, loans, grants, and development assistance.

The Fiscal Year 2011 competition was announced on *http://www.hud.gov* on May 7, 2011. The NOFA provided $49.401 million for Section 4 Capacity Building grants For the Fiscal Year 2011 competition, HUD awarded three competitive Section 4 Capacity Building grants totaling $49,401,000.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: September 13, 2011.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

Appendix A

FISCAL YEAR 2011 FUNDING AWARDS FOR THE SECTION 4 CAPACITY BUILDING FOR COMMUNITY DEVELOPMENT AND AFFORDABLE HOUSING PROGRAM

Recipient	State	Amount
Enterprise Community Partners, Inc	MD	$19,727,792
Local Initiatives Support Corporation	NY	22,173,386
Habitat for Humanity International	GA	7,499,822
Total		49,401,000

[FR Doc. 2011–24395 Filed 9–22–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2011–N128; BAC–4311–K9–S3]

Elizabeth Hartwell Mason Neck National Wildlife Refuge, Fairfax County, VA, and Featherstone National Wildlife Refuge, Prince William County, VA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for Elizabeth Hartwell Mason Neck (Mason Neck) and Featherstone National Wildlife Refuges (NWRs; refuges). In this final CCP, we describe how we will manage these refuges for the next 15 years.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI by any of the following methods. You may request a hard copy or a CD–ROM.

Agency Web site: Download a copy of the document at *http://www.fws.gov/northeast/planning/MasonNeck_Featherstone/ccphome.html.*

E-mail: Send requests to *northeastplanning@fws.gov.* Include ''Mason Neck and Featherstone Refuges CCP'' in the subject line of your e-mail.

Mail: Nancy McGarigal, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

Fax: Attention: Nancy McGarigal, 413–253–8468.

In-Person Viewing or Pickup: Call 703–490–4979 to make an appointment during regular business hours at the Potomac River NWR Complex headquarters office, 14344 Jefferson Davis Highway, Woodbridge, VA 22191–2716.

FOR FURTHER INFORMATION CONTACT: Greg Weiler, Refuge Manager, Potomac River NWR Complex, 14344 Jefferson Davis Highway, Woodbridge, VA 22191–2716; phone: 703–490–4979; fax: 703–490–5631; e-mail: *fw5rw_msnnwr@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Mason Neck and Featherstone NWRs. We started this process through a notice of intent in the **Federal Register** (72 FR 28066) on May 18, 2007. We released the draft CCP/environmental assessment (EA) to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (76 FR 582) on January 5, 2011.

Mason Neck and Featherstone NWRs, together with Occoquan Bay NWR, comprise the Potomac River NWR Complex, which is headquartered in Woodbridge, Virginia. Mason Neck NWR was established in 1969 as the first NWR specifically created to protect a Federally listed species. The refuge was created under the authority of the Endangered Species Preservation Act of 1966, the precursor to the Endangered Species Act of 1973. The bald eagle (*Haliaeetus leucocephalus*), which was Federally listed as threatened in 1969, was, and continues to be, the focal species of concern on the refuge. Due to successful recovery efforts throughout its range, the bald eagle was officially removed from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) in 2007. It continues to be protected, however, under other Federal laws and State law in Virginia. Mason Neck NWR encompasses 2,277 acres of forest, marsh, and riverine habitat along Occoquan Bay and the mainstem of the tidal Potomac River. Refuge visitors engage in wildlife observation and photography, environmental education and interpretation, and deer hunting.

Featherstone NWR was established in 1979 with land acquired from the District of Columbia. It was further expanded in 1992 with lands donated by Prince William County. It presently encompasses 325 acres of marsh and forested riverine habitat along the southwest edge of Occoquan Bay. Its wetlands are important habitat for bald eagles, wading birds, waterbirds, and waterfowl, as well as other native species of conservation concern. The refuge has been closed to public use and access since its establishment because there is no public parking available or safe access across active railroad tracks, which lie along the length of the refuge's western boundary.

We announce our decision and the availability of the FONSI for the final CCP for Mason Neck and Featherstone NWRs in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft CCP/EA.

The CCP will guide us in managing and administering Mason Neck and Featherstone NWRs for the next 15 years. Alternative B, as described for both refuges in the draft CCP/EA, and with the modifications described below, is the foundation for the final CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each NWR. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years

in accordance with the Administration Act.

CCP Alternatives, Including the Selected Alternative

Our draft CCP/EA (76 FR 582) addressed several key issues, including:

- Managing forested habitat to benefit bald eagles, great blue heron, other migratory birds of conservation concern, and other native wildlife species;
- Protecting wetland habitat to benefit waterbirds, waterfowl, and migratory fish;
- Expanding and enhancing wildlife-dependent recreational opportunities; and
- Providing public access to Featherstone NWR.

To address these issues and develop a plan based on each refuge's establishing purposes, vision, and goals, we evaluated three alternatives for Mason Neck NWR and two alternatives for Featherstone NWR in the draft CCP/EA. The alternatives for both Mason Neck and Featherstone NWRs have some actions in common, such as controlling invasive species, monitoring wildlife diseases, encouraging research that benefits our resource decisions, protecting cultural resources, and distributing refuge revenue sharing payments to Fairfax and Prince William Counties.

There are other actions that differ among the alternatives. The draft CCP/EA describes each alternative in detail and relates them to the issues and concerns that arose during the planning process. Below, we provide summaries for the three Mason Neck NWR alternatives evaluated in the draft CCP/EA, followed by summaries for the two Featherstone NWR alternatives.

Mason Neck Refuge Alternatives

Alternative A (Current Management)

This alternative is the ''No Action'' alternative required by NEPA. Alternative A defines our current management activities, including those planned, funded, or underway, and serves as the baseline against which to compare alternatives B and C. Alternative A would maintain our present refuge staffing level and our visitor services facilities, including existing trails and viewing platforms. We would continue to emphasize wildlife observation and photography opportunities, and provide a fall deer hunt. Our biological program priorities would continue to be protecting the refuge's wetlands and upland forest for migratory birds, with particular emphasis on protecting nesting bald eagles and the great blue heron rookery. Controlling invasive plants and forest pests would also continue to be an important part of our program.

Alternative B (Improved Management for Trust Resources)

This is the Service-preferred alternative. It combines the actions we believe would best achieve the refuge's purposes, vision, and goals, and the intent of NWRS policy on Biological Integrity, Diversity, and Environmental Health (601 FW 3). This alternative would also best respond to the issues that arose during the planning process.

Alternative B would improve our management of refuge habitats to support Federal trust resources and species of conservation concern. In particular, our priority would be to enhance our management of the refuge's upland forests to benefit bald eagles, great blue heron, and other forest-dependent migratory birds through measures that improve forest health. Managing deer populations to minimize overbrowsing and controlling invasive plants and pests are actions planned. We would also pursue actions to improve habitat quality in the refuge's marsh habitat to benefit bald eagles, waterfowl, waterbirds, and migratory fish. These actions include working with partners to improve water quality and clean up debris in Great Marsh. In Little Marsh, we would upgrade the water control structure and alter the water level regime to promote better foraging opportunities for waterbirds and bald eagles, and to improve fish passage. In addition, we would work with partners to evaluate shoreline erosion risk and identify ways to address erosion in anticipation of climate change impacts.

The improvement of our current trails, and the addition of new trails and observation platforms, would offer increased opportunities for wildlife observation, photography, and interpretation. We would also expand our interpretive programs and outreach efforts to inform and involve more people in working towards refuge goals. In addition, once administrative and funding resources are in place, we would offer a youth turkey hunt and consider expanding our existing deer hunt.

Alternative C (Enhanced Public Use Management)

Alternative C would manage habitat similar to alternative A, but would expand wildlife-dependent public use programs beyond that which is proposed under either alternatives A or B. We would devote more staff time and resources to offering new or improved priority public use programs. For example, we would offer a new muzzleloader deer hunting season, construct additional photography blinds, and offer more guided and self-guided wildlife observation tours and environmental education programs.

Featherstone Refuge Alternatives

Alternative A (Current Management)

Similar to alternative A for Mason Neck NWR, this alternative satisfies the NEPA requirement for a ''No Action'' alternative. It describes our current management priorities and activities, and serves as a baseline for comparing and contrasting alternative B. Under alternative A, Featherstone NWR would continue to be closed to all public use and access. Our priorities would be to protect the refuge from vandalism and trespassing, control invasive plants, and monitor for threats to wildlife and habitats.

Alternative B (Enhanced Management)

This is the Service-preferred alternative. Habitat and species management would focus on protecting sensitive bald eagle areas from human disturbance and improving the monitoring and treatment of invasive plants, pests, and pathogens to avoid catastrophic loss or degradation of habitat. Similar to our proposal under alternative B for Mason Neck NWR, we would work with partners to evaluate shoreline erosion risk and identify ways to address it in anticipation of climate change impacts.

Under alternative B, we would also continue to work with Prince William County to secure public parking and legal and safe pedestrian access to the refuge, which has been an issue since refuge establishment. Once that access is secured, and we have the additional staff to manage those activities, we would provide opportunities for wildlife observation and nature photography on designated trails, and fishing at designated sites.

Under alternative B, once we have administrative and funding resources in place, we would evaluate a proposal to provide hunting opportunities on refuge lands. Other alternatives, including no action, would be considered in that hunt program evaluation, and there would be public involvement before making a final decision on the types of hunting opportunities offered.

Comments

We solicited comments on the draft CCP/EA for Mason Neck and Featherstone NWRs from January 5 to February 22, 2011 (76 FR 582). During

the comment period, we received 79 responses, both oral and written. All comments we received were evaluated. A summary of those comments, and our responses to them, is included as appendix G in the final CCP.

Selected Alternative

After considering the comments we received on our draft CCP/EA, we have made one modification to alternative B for Featherstone NWR. We have decided to allow non-motorized boaters to land at one designated site on the refuge's shoreline to facilitate wildlife observation and nature photography. The designated landing site is a portion of tidal beach on Farm Creek (refer to the final CCP, chapter 4, map 4.3 for details) and corresponds with the proposed location of the southernmost observation deck and fishing platform that we presented in the draft CCP/EA (refer to the draft CCP/EA, chapter 3, map 3.3 for details). Visitors accessing the refuge at this location by non-motorized boats would be allowed to walk approximately 0.4 miles along an existing footpath (indicated on map 4.3 in the final CCP). Boaters would be confined to this section of footpath until the rest of the refuge is officially open to public use, as was detailed in the draft CCP/EA. Other minor changes to alternative B for both refuges are described in the FONSI (appendix H in the final CCP) and in our response to public comments (appendix G in the final CCP).

We have selected alternative B to implement for both Mason Neck and Featherstone NWRs, with the changes identified above, for several reasons. Alternative B for both refuges comprises a mix of actions that, in our professional judgment, work best towards achieving each refuges' purposes, visions, and goals, NWRS policies, and the goals of other State and regional conservation plans. We also believe that alternative B most effectively addresses the key issues raised during the planning process. The basis of our decision is detailed in the FONSI, which is included as appendix H in the final CCP.

Public Availability of Documents

You can view or obtain documents as indicated under **ADDRESSES**.

Dated: August 22, 2011.

Wendi Weber,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, MA 01035.

[FR Doc. 2011–24552 Filed 9–22–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD06000, L16100000.DP0000]

Notice of Availability of South Coast Draft Resource Management Plan Revision and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the South Coast Planning Area (California), and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability of the Draft RMP/EIS in the **Federal Register.** The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: You may submit written comments related to the South Coast Draft RMP/EIS by any of the following methods:

- *Web site: http://www.blm.gov/ca/palmsprings.*
- *E-mail: Greg_Hill@blm.gov.*
- *Fax:* (760) 833–7199.
- *Mail:* Bureau of Land Management, Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, California 92262.

Copies of the South Coast Draft RMP/EIS are available for review at the Palm Springs-South Coast Field Office and via the Internet at: *http://www.blm.gov/ca/palmsprings.* Electronic (on CD–ROM) or paper copies may also be obtained by contacting Greg Hill at the address and phone number below.

FOR FURTHER INFORMATION CONTACT: Greg Hill; Bureau of Land Management, Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, California 92262; (760) 833–7140; *Greg_Hill@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The South Coast Draft RMP provides guidance for the management of approximately 300,000 acres of BLM-administered public lands in portions of five highly urbanized southern California counties: San Diego, Riverside, San Bernardino, Orange, and Los Angeles. These public lands include over 130,000 acres of BLM-administered surface lands and 167,000 acres of Federal mineral ownership where the surface is privately owned. The Draft RMP/EIS is a revision to the existing South Coast RMP (1994). Since 1994, there have been significant changes in the patterns of urban growth; increased demands on the resources of the public lands; changing policies and emphasis on the management of public lands and local land use planning; and new data that have led to the listing of additional threatened or endangered species. The Notice of Intent to prepare a land use plan revision and associated EIS was published in the **Federal Register** on August 7, 2007 (72 FR 44173). The BLM held public workshops and scoping meetings in Campo, San Diego, Temecula, and Santa Clarita in December 2007, and invited agencies to participate as cooperating agencies in the planning effort. The Draft RMP/EIS analyzes four alternatives, including a No Action alternative, Alternative A, and an agency Preferred Alternative, Alternative D, designed to address management challenges and issues raised during scoping, including, but not limited to Areas of Critical Environmental Concern (ACEC), sensitive species and other wildlife habitat, lands with wilderness characteristics, livestock grazing, recreation, off highway vehicle use, minerals management, and land use authorizations.

Pursuant to 43 CFR 1610.7–2(b), this notice announces a concurrent public comment period on proposed ACECs. The Draft RMP/Draft EIS proposes changes to ACEC designations and elimination of ACECs within wilderness. The Preferred Alternative, Alternative D, includes 9 ACECs comprising of a total of 26,627 acres, or 20 percent of the planning area's surface acres. This is in contrast with Alternative A, the No Action Alternative of 7 ACECs with 14,539 acres, or 11 percent of surface acres. The proposed ACECs and resource use limitations

which would occur if formally designated are listed below:

Proposed ACEC	Alternatives and Acres				Limitations
	A	B	C	D	
Cedar Canyon	708	0	708	0	ACECs are:
Johnson Canyon	1,800	0	1,800	1,800	Closed to OHV use or limited to designated roads and trails under all alternatives.
Kuchamaa	803	0	803	0	
Million Dollar Spring	6,265	0	6,265	0	
Potrero	2,966	0	0	0	Avoidance areas for land use authorizations under Alternatives A, C, and D. ACECs are exclusion areas under Alternative B.
Santa Ana River Wash	750	750	750	750	
Santa Margarita River	1,247	4,474	1,247	4,474	
Upper Santa Clara River	0	1,620	0	1,620	Closed to fluid mineral and geothermal leasing and sale of mineral materials under Alternatives A, C, and D. The Western Riverside County ACEC would be considered for sale of mineral materials on a case-by-case basis with site specific analysis required to protect ACEC values of relevance and importance.
Western Riverside County	0	24,995	0	0	
Oak Mountain	0	0	0	894	
Gavilan	0	0	0	3,822	
Badlands	0	0	0	1,051	
Beauty Mountain	0	27,376	0	3,925	
Otay/Kuchamaa	0	8,291	0	8,291	
Total acres	14,539	67,506	11,573	26,627	

A Record of Decision for the proposed RMP will be prepared following publication of the Proposed RMP/Final EIS in accordance with the planning regulations at 43 CFR 1610.5–1 and the NEPA, 40 CFR 1505.2.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of respondents will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

John R. Kalish,

Manager, Palm Springs-South Coast Field Office.

Authority: 40 CFR 1506.6 and 1506.10; 43 CFR 1610.2.

[FR Doc. 2011–24493 Filed 9–22–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZG03000.L16100000.DQ0000. LXSS085A0000.241A.00]

Notice of Availability of the Proposed Ironwood Forest National Monument Resource Management Plan/Final EIS

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP)/Final Environmental Impact Statement (EIS) for the Ironwood Forest National Monument and by this notice is announcing its availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP/Final EIS. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes this notice in the **Federal Register**.

ADDRESSES: Copies of the Ironwood Forest National Monument Proposed RMP/Final EIS have been sent to affected Federal, State, and local government agencies; the Ak Chin Indian Community, Gila River Indian Community, Tohono O'odham Nation, Salt River Pima-Maricopa Indian Community, and San Carlos Apache Indian Community; and to other stakeholders. Copies of the Proposed RMP/Final EIS are available for public inspection at the BLM Tucson Field Office, 12661 East Broadway Boulevard, Tucson, Arizona. Interested persons may also review the Proposed RMP/Final EIS on the Internet at *http://www.blm.gov/az/st/en/prog/planning/ironwood.html.* All protests must be in writing and mailed to the following addresses:

Regular Mail:

BLM Director (210), *Attention:* Brenda Hudgens-Williams, P.O. Box 71383, Washington, DC 20024–1383

Overnight Mail:

BLM Director (210), *Attention:* Brenda Hudgens-Williams, 20 M. Street, SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Laura Olais, Ironwood Forest National Monument Manager, Tucson Field Office, 12661 East Broadway, Tucson, Arizona 85748–7208; or by telephone at 520–258–7235; or by e-mail at *lolais@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during

normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Ironwood Forest National Monument, established by Presidential Proclamation on June 9, 2000, encompasses approximately 128,400 acres of Federal land administered by the BLM; approximately 54,700 acres of State Trust land (administered by the Arizona State Land Department); and approximately 6,000 acres that are privately owned. The Proposed RMP/Final EIS affects only Federal lands and Federal interests located within the established boundary of the monument. The BLM's Tucson Field Office has the responsibility of planning for and management of Federal lands within the monument.

Issues identified as part of the planning process and addressed in the Proposed RMP/Final EIS include air resources, biological resources, cultural resources, fire management, grazing management, hazardous materials, lands and realty, mineral and energy resources, Native American issues, recreation, social and economic conditions, soils, wilderness characteristics, transportation and access, visual resources, and water resources. The Proposed RMP/Final EIS includes strategies for protecting and preserving the biological, cultural, recreational, geological, educational, scientific, and scenic values for which the monument was established.

Four alternatives were analyzed in the Proposed RMP/Final EIS. The ''no action'' alternative represents current management of the Ironwood Forest National Monument. Three additional ''action'' alternatives present reasonable, yet varying, management scenarios. The alternatives range from emphasizing maintenance of the naturalness of the Ironwood Forest National Monument (by restricting some human uses) to emphasizing continued human uses, while still protecting the objects and resources for which the monument was established. The range of alternatives in the Proposed RMP/Final EIS evaluates planning decisions brought forward from current BLM planning documents, including the Phoenix Resource Management Plan (1989), Arizona Standards for Rangeland Health and Guidelines for Grazing Administration (1987), and the Arizona Statewide Land Use Plan Amendment for Fire, Fuels, and Air Quality Management (2003).

Comments on the Draft RMP/EIS received from the public and internal BLM review were considered and incorporated as appropriate into the proposed plan. Public comments resulted in a variety of clarifications and modifications throughout the Proposed RMP/Final EIS, but did not significantly change the overall proposed land use plan. Revisions made between the Draft RMP/EIS and the Proposed RMP/Final EIS include: Identification of objects of the monument to be protected and more detailed analysis of the impacts on the objects of the monument; the addition of an alternative to allow recreational shooting in specific areas, and the inclusion of a shooting analysis of the planning area; deferral of the decision to classify two ephemeral grazing allotments as perennial; and quantification of some management goals and objectives, and modifications to implementation-level decisions to correctly categorize them as plan-level decisions or administrative actions. Other revisions of certain management actions consisted of the following: Under cultural resources, Cocoraque Butte will not be allocated to public use; also under cultural resources, cultural resource surveys were conducted along roads that would be open for motorized use, and survey findings have been added to the RMP as well as associated impacts for each alternative; under travel management, some minor changes have been made to the alternatives to close certain routes and open others to motorized use, resulting in minor changes to the overall number of miles of routes designated for various uses; also under travel management, mechanized use would now be allowed on all designated routes with the exception of routes designated as trails or where otherwise restricted; under vegetation management, the proposed plan has been revised and proposes that only native plants be used in restoration activities; under lands and realty, utility corridors have been shifted so that they are not centered on the existing right-of-way in order to increase maneuverability for additional utilities; also under lands and realty, the BLM will not acquire surface estate unless mineral estate can be acquired concurrently (or is already federally owned).

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP/Final EIS may be found in the ''Dear Reader Letter'' of the Ironwood Forest National Monument Proposed RMP/Final EIS and at 43 CFR 1610.5–2. E-mail and faxed protests will not be accepted unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mail to *Brenda_Hudgens-Williams@blm.gov.*

All protests, including the follow-up letter to e-mails or faxes, must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5.

James G. Kenna,

Arizona State Director.

[FR Doc. 2011–24340 Filed 9–22–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO–9230000–L1430000–ET0000; COC–0124534]

Public Land Order No. 7783; Extension of Withdrawal Created by Subtitle A of Public Law 104–201; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of a withdrawal created by Subtitle A of Public Law 104–201 for an additional 15-year period. Subtitle A of Public Law 104–201 withdrew 3,133 acres of public lands and 11,415 acres of Federally owned minerals at the Fort Carson Military Reservation, and 2,517 acres of public lands and approximately 130,139 acres of Federally owned minerals at the Piñon Canyon Maneuver Site from all forms of appropriation under the public land laws, including the mining laws, mineral and geothermal leasing laws, and mineral materials disposal laws, and reserved the lands for use by the Army for military maneuvering, training and

weapons firing, and other consistent defense-related purposes as specified in the Act. The withdrawal extension is necessary to continue protection and use of the lands for military readiness purposes.

DATES: *Effective Date:* September 23, 2011.

FOR FURTHER INFORMATION CONTACT: John D. Beck, Branch of Lands and Realty, Bureau of Land Management Colorado State Office, (303) 239–3882. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the Bureau of Land Management contact during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In accordance with Sec. 2908(b) of Public Law 104–201, Subtitle A, the Department of the Army has notified the Department of the Interior that it has a continuing military need for the withdrawn lands. The purpose for which the withdrawal was first made requires this extension in order for the lands to continue to be used for military readiness purposes. The withdrawal extended by this order will expire on September 22, 2026, unless as a result of a review conducted before the expiration date pursuant to the provisions of Public Law 104–201 and Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority of the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and Section 2908 of Public Law 104–201, Subtitle A, it is ordered as follows:

The withdrawal created by Subtitle A of Public Law 104–201 (110 Stat 2807 (1996)), which withdrew 3,133 acres of public lands and 11,415 acres of Federally owned minerals at the Fort Carson Military Reservation, and 2,517 acres of public lands and approximately 130,139 acres of Federally owned minerals at the Piñon Canyon Maneuver Site from all forms of appropriation under the public land laws, including the mining laws, mineral and geothermal leasing laws, and mineral materials disposal laws, and reserved the lands for use by the Army for military maneuvering, training and weapons firing, and other consistent defense-related purposes as specified in Subtitle A of the Act, is hereby extended for an additional 15-year term until September 22, 2026.

Dated: September 19, 2011.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–24524 Filed 9–22–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft General Management Plan/Environmental Impact Statement for Effigy Mounds National Monument, Iowa

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a draft General Management Plan (GMP)/Environmental Impact Statement (EIS) for Effigy Mounds National Monument in Harpers Ferry, Iowa.

DATES: The draft GMP/EIS will remain available for public review for 60 days following the publishing of the notice of availability in the **Federal Register** by the Environmental Protection Agency. Public meetings will be held during the 60-day review period on the GMP/EIS in the Harpers Ferry, Iowa area, in summer 2011. Meeting times and locations will be announced in the local press, sent out to the mailing list for this project and uploaded to the plan Web site at *http://www.parkplanning.nps.gov/efmo.*

ADDRESSES: Copies of the draft GMP/EIS are available from the Superintendent, Effigy Mounds National Monument at 151 Highway 76, Harpers Ferry, Iowa 52146. The document is also available to be picked up in person at the address shown above.

SUPPLEMENTARY INFORMATION: This document is a revised Draft GMP/EIS for Effigy Mounds National Monument, which replaces the Draft GMP/EIS released in May of 2009. Shortly after that public release, the NPS took a close look at past construction activities and practices in the park, particularly those with the potential to harm the archeological resources the park was created to protect, and decided to substantially revise the draft.

This GMP/EIS will guide the management of the Effigy Mounds National Monument for the next 25 years. The draft GMP/EIS considers three draft conceptual alternatives—a no-action and two action alternatives, including the NPS preferred alternative. The draft GMP/EIS assesses impacts to cultural resources (archeological, landscapes, ethnographic resources, and museum collections), to natural resources (soils, wild and scenic rivers, vegetation, fish and wildlife, special status species, and visual resources/viewsheds), to visitor use and experience, to the socioeconomic environment, and to monument operations and facilities. The preferred alternative focuses on providing an enhanced visitor experience with increased understanding of the monument while protecting and preserving natural and cultural resources. The desired visitor experience would be to make personal connections to the monument's tangible resources through understanding of the significance of the (pre-European contact) American Indian moundbuilding story and its relationship to the heritage of the region. The landscape and visitor facilities would support a contemplative atmosphere with opportunities for the public to spend time reflecting on the lives and legacy of the moundbuilders and the sacred nature of the site today. The natural setting created by preserving or restoring landscapes would provide a connection between the moundbuilding cultures and the environment that shaped their lives and beliefs.

The biggest change proposed in the revised Draft GMP/EIS is the elimination of the Multipurpose Research Center as a physical structure in the monument. While the NPS continues to believe there is tremendous value in promoting and coordinating additional non-invasive research aimed at the mounds and their long-term preservation, we now believe this would best be accomplished by establishing either a virtual research center (via enhanced partnerships and better coordination and cooperation with existing entities), or by establishing a physical presence for the research center outside the monument in a nearby community. Therefore, new construction of facilities and trails at Effigy Mounds National Monument would be minimal under the preferred alternative. Using the direction provided in this plan, specific locations of trails in the Heritage Addition would be identified in a subsequent trail development plan. This plan envisions a small visitor contact station at the Sny Magill unit of the park within an expanded boundary area. Once this land

is acquired, subsequent site development planning would determine location and design of the station as well as of redesigned trails for Sny Magill.

FOR FURTHER INFORMATION CONTACT: The Superintendent, Effigy Mounds National Monument, at the address or telephone number above.

You may submit your comments by any one of several methods. You may comment via the Internet through the Web site noted above. You may also send comments to the Superintendent, Effigy Mounds National Monument at the address above. You may contact the Superintendent by phone at 563–873–3491. Finally, you may hand-deliver comments to the Effigy Mounds National Monument headquarters at the address above. Before including your address, telephone number, electronic mail address, or other personal identifying information in your comments, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, of organizations or businesses, available for public inspection in their entirety.

Dated: April 27, 2011.

Martin A. Sterkel,

Acting Regional Director, Midwest Region.

[FR Doc. 2011–24543 Filed 9–22–11; 8:45 am]

BILLING CODE 4312–93–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision; Apostle Islands National Lakeshore, WI

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of availability for the Record of Decision on the Final General Management Plan/Wilderness Management Plan/Final Environmental Impact Statement, Apostle Islands National Lakeshore, Wisconsin.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the Final Environmental Impact Statement (EIS) for the General Management Plan (GMP)/Wilderness Management Plan for Apostle Islands National Lakeshore, Wisconsin. On June 24, 2011, the Regional Director for the NPS Midwest Region approved the ROD for the Final GMP/EIS. As soon as practicable, the NPS will begin to implement the selected alternative.

ADDRESSES: The ROD will be available for public inspection via the Internet through the NPS Planning, Environment, and Public Comment Web site at *http://parkplanning.nps.gov/apis,* or by writing to Ms. Julie Van Stappen, Chief of Planning and Resource Management, Apostle Islands National Lakeshore, 415 Washington Avenue, Bayfield, Wisconsin 54814; telephone: 715–779–3398, extension 211. Copies also can be picked-up in person at the park's headquarters at 415 Washington Avenue, Bayfield, Wisconsin.

SUPPLEMENTARY INFORMATION: Under the selected alternative the park's current management direction will continue with some minor changes to increase the opportunities for more people to have an island experience. Preservation of natural and cultural resources will remain a top priority. The current mix of recreational activities will stay the same and the visitor experience in most of the park will stay largely as it is. Management of the wilderness area will continue largely the way it is now. The Raspberry Island light station will continue to be the focal point for cultural resource interpretation and its cultural landscape will be rehabilitated consistent with plans developed but never implemented prior to the light station restoration. Wilderness management will remain consistent with current direction, with no net change in campsite numbers or trail miles, with the exception of the Oak Island group campsite which will be relocated outside of wilderness, and the original site restored. The NPS will continue to have visitor centers at Bayfield, Little Sand Bay, Stockton Island, and the Northern Great Lakes Visitor Center. The NPS will continue to be a leader in sustainable practices at Apostle Islands National Lakeshore.

Key Changes in the Selected Action Include

- Two or more light stations will be restored or rehabilitated, similar to the Raspberry Island light station, and the rest will continue to be preserved at current levels.
- If feasible, part of the Long Island light station will be rehabilitated for park staff housing to better protect and interpret the resources of Long Island.
- If life estates on Sand or Rocky Island naturally expire within the life of this plan, historically significant structures will be preserved and interpreted.
- If feasible, additional transportation opportunities will be sought to encourage visitors to come to some of the inner islands, such as Basswood or Sand islands; some additional visitor facilities will be developed on these islands, including day use areas, new trails, and campsites.
- Most of the Stockton Island campground will be relocated to Presque Isle; however, a few campsites will be maintained on the north end of the current campground.
- There will be no change in the number of public docks in the park, but some docks will be relocated, improved, or expanded.
- The Bayfield visitor center will be relocated to a new location closer to the water to improve contact with visitors and to be co-located, if possible, with the park's primary maintenance and an operations center; the park headquarters will remain in the old Bayfield County Courthouse.
- The Little Sand Bay Visitor Center, currently in poor condition and not cost-effective to renovate, will be replaced with a smaller, more sustainable structure that offers the same level of visitor services as today and honors the site's rich history. The restored fishing boat ''Twilite'' will be a featured exhibit.
- A new ranger station and accessible beach ramp will be developed at Meyers Beach.

The ROD includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, the rationale for why the selected action is the environmentally preferable alternative, a finding of no impairment of park resources and values, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Van Stappen, Chief of Planning and Resource Management, Apostle Islands National Lakeshore, 415 Washington Avenue, Bayfield, Wisconsin 54814, or by calling 715–779–3198, extension 211.

Dated: June 27, 2011.

Michael T. Reynolds,

Regional Director, Midwest Region.

[FR Doc. 2011–24555 Filed 9–22–11; 8:45 am]

BILLING CODE 4312–97–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0013]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Semi-Annual Progress Report for the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Program

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice, Office on Violence Against Women (OVW) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for sixty days until November 22, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact Cathy Poston, Office on Violence Against Women, at 202–514–5430 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0013. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 165 grantees of the Rural Program. The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, sexual assault, stalking, and child victimization by supporting projects uniquely designed to address and prevent these crimes in rural jurisdictions. Grantees include States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 165 respondents (Rural Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Rural Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–24473 Filed 9–22–11; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Robotics Technology Consortium, Inc.

Notice is hereby given that, on July 27, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Robotics Technology Consortium (''RTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Machining, Longmont, CA; Carnegie Robotics LLC, Pittsburgh, PA; Embry-Riddle Aeronautical University, Daytona Beach, FL; EMSolutions, Inc., Arlington, VA; L–3 Communications CyTerra, Woburn, MA; Rehg Enterprises, Atlanta, GA; Segway Robotics, Bedford, MA; Sky Research, Inc., Etna, NH; and Themis Computer, Fremont, CA, have been added as parties to this venture.

Also, Action Engineering, Morrison, CO; Adaptive Materials, Ann Arbor, MI; Advanced Technology Institute (ATI), Charleston, SC; Alion Science and Technology Corporation, Westminister, MD; Alliance Spacesystems, LLC, Pasadena, CA; American GNC Corporation, Simi Valley, CA; Atair Aerospace, Inc., Brooklyn, NY; BFA Systems, Inc., Huntsville, AL; BioMimetic Systems, Cambridge, MA; Braintech, Inc., Washington, DC; Concurrent Technologies, Inc., Pittsburgh, PA; Dragonfly Pictures, Inc., Essington, PA; EDAG Inc., Auburn Hills, MI; Energetics Technology Center, Inc. (ETC), La Plata, MD; Expertise Applications, Inc., San Diego, CA; First Response Robotics, LLC, Amelia, OH; Ibis-Tek, Butler, PA; ICI—Integrated Consultants, Inc., San Diego, CA; Institute for Disabilities Research (IDRT), Wheaton, MD; Intraduce Transit, LLC, Birmingham, AL; Inuktun USA, LLC, Robert, LA; i Track Inc.,

Oxford, MI; ITT Corporation, Albuquerque, NM; Kairos Autonomi, Sandy, UT; Lawrence Technological University, Southfield, MI; Mel Siegel, Consultant in Science & Technology, Pittsburgh, PA; Mountain Top Technologies, Inc., Johnstown, PA; Navtech GPS, Springfield, VA; Novint Technologies, Inc., Albuquerque, NM; Omnitech Robotics International LLC, Easton, MD; Onvio, LLC, Salem, NH; Pandora Data Systems, Inc., Santa Cruz, CA; Pegasus Global St.rategic Solutions, Reston, VA; PERL Research LLC, Huntsville, AL; Polygon Company, Walkerton, IN; Readylabs, Inc., Pleasanton, CA; RoPro Design Inc., Beaver, PA; Sensable Technologies, Inc., Woburn, MA; Shee Atika Technologies, LLC, Kirkland, WA; SJ Automation LLC, Monterey, CA; Smart Information Flow Technologies, LLC (SIFT), Minneapolis, MN; Springfield Electric Supply Co., Inc., Springfield, IL; Stealth Robotics, LLC, Longmont, CO; Sullivan Advanced Technology, San Diego, CA; TBI, LLC, Washington, DC; Tech Team Government Solutions, Ann Arbor, MI; The Technology Collaborative (NCDR), Pittsburgh, PA; The University of Texas at Arlington, Arlington, TX; Three Rivers 3D, Inc., Gibsonia, PA; Toycen Corporation, Ogdenburg, NY; University of Florida, Gainesville, FL; University of Washington, Seattle, WA; Van Doren Designs, LLC, Southbury, CT; and William Travis Lontz, Auburn, AL, have withdrawn from this venture.

In addition, the following parties have changed their names: Foster-Miller, Inc. to QinetiQ North America, Waltham, MA; RF Extreme to Integrated Microwave Technologies, LLC, Hackettstown, NJ; DTC Communications, Inc. to Cobham Surveillance; Washington, DC; Innovative Technical Solutions, Inc. to NovaSol, Honolulu, HI; and Tech Team Government Solutions to Jacobs Technology, Ann Arbor, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RTC intends to file additional written notifications disclosing all changes in membership.

On October 15, 2009, RTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 30, 2009 (74 FR 62599).

The last notification was filed with the Department on July 26, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 9, 2010 (75 FR 54914).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–24397 Filed 9–22–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Warheads and Energetics Consortium

Notice is hereby given that, on August 9, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Warheads and Energetics Consortium (''NWEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ADEX Machining Technologies, Greenville, SC; Arlington Machine and Tool Company, Fairfield, NJ; Blue Juice, Inc., San Rafael, CA; Ervin Industries Inc., Ann Arbor, MI; Gates Albert, Inc., North Chili, NY; General Dynamics Armament and Technical Products, Inc., Williston, VT; Hi-Shear Technology Corporation, Torrance, CA; Honeywell International, Inc., Colonial Heights, VA; IllinoisRocstar LLC, Champaign, IL; Keystone Automation, Inc., Duryea, PA; Marotta Controls, Inc., Montville, NJ; MaTech, Salisbury, MD; NAVSYS Corporation, Colorado Springs, CO; Orbital Research, Inc., Cleveland, OH; Sentel Corporation, Alexandria, VA; SRI International, Menlo Park, CA; Thales USA Defense & Security, Inc., Arlington, VA; United Support Solutions, Inc., Cedar Grove, NJ; and Woodward HRT, Inc., Santa Clarita, CA, have been added as parties to this venture.

Also, Applied Sonics Incorporated, Littleton, CO; Bennington Microtechnology Center, North Bennington, VT; C–2 Innovations, Inc., Stow, MA; Combustion Propulsion and Ballistic Technology Corp., State College, PA; E2 Project Management, LLC, Rockaway, NJ; Erigo Technologies LLC, Enfield, NH; Explo Systems, Inc., Minden, LA; FED–COMM USA, Inc., Escondido, CA; Indiana Ordnance Works Inc., Charlestown, IN; Liteboard Technology, Annandale, VA; Malcolm Pirnie, Inc., White Plains, NY; QinetiQ North America, Reston, VA; QuesTek Innovations, LLC, Evanston, IL; Technology Management Company, Inc., Albuquerque, NM; Tetra Tech, Inc., Honolulu, HI; Trident Research, LLC, Austin, TX; Unified Design Corporation, Rockaway, NJ; and University of Texas at Austin, Austin, TX, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NWEC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NWEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on February 25, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 25, 2011 (76 FR 16820).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–24396 Filed 9–22–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Limo Foundation

Notice is hereby given that, on July 19, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Limo Foundation (''LiMo'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, KT, Seoul, REPUBLIC OF KOREA; and ZTE Corporation, Shanghai, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the Foundation. Membership in the Foundation remains open, and the Foundation intends to file

additional written notifications disclosing all changes in membership.

On March 1, 2007, LiMo filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 9, 2007 (72 FR 17583).

The last notification was filed with the Department on March 23, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 28, 2011 (76 FR 23838).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–24394 Filed 9–22–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on July 27, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Anglicotech LLC, Washington, DC; Battelle, Columbus, OH; Baxter Healthcare Corporation, Round Lake, IL; Climax Portable Machine Tools, Inc., Newberg, OR; Clockwork Solutions, Inc. (CSI), Austin, TX; Eastern Michigan University, Ypsilanti, MI; Edison Welding Institute (EWI), Columbus, OH; General Dynamics, St. Petersburg, FL; GM Powertrain—Transmission Manufacturing Engineering, Pontiac, MI; Intel Corporation, Chandler, AZ; InTheWorks, Inc., Bainbridge Island, WA; M.P. Chene, Inc., Yorba Linda, CA; The Marlin Group, LLC, Oak Hill, VA; Microsoft Corporation, Cambridge, MA; MTConnect Institute, McLean, VA; The National Center for Technology Advancement (NCTA), Arlington, VA; OBD Solutions, Phoenix, AZ; The Ohio State University/Ohio Supercomputer Center (OSC), Columbus, OH; Optomec, Inc., Albuquerque, NM; Picometrix, LLC, Ann Arbor, MI; Portal Dynamics Inc., Alexandria, VA; Portland Tacoma (PORTAC) Consulting, Stevenson, WA; Services and Solutions Group, LLC, N. Charleston, SC; Southwest Research Institute, San Antonio, TX; Topline Technology Solutions, LLC, Bedford, IN; TotalSim LLC, Dublin, OH; Universal Synaptics Corporation, Ogden, UT; University of Louisville, Louisville, KY; University of Massachusetts Lowell, Lowell, MA; University of Texas Austin, Austin, TX; Vista Controls, Inc., dba Curtiss-Wright Controls Electronic Systems, Santa Clarita, CA; and Wend Associates, Inc., Marine City, MI, have been added as parties to this venture.

Also, Aging Aircraft Consulting, LLC, Warner Robins, GA; Anautics, Oklahoma City, OK; ARC Technology Solutions, LLC, Nashua, NH; BAE Systems, Wayne, NJ; BCT Technology, Inc., Keene, NH; Coherix, Inc., Ann Arbor, MI; Eastern Instrumentation of Philadelphia, Morristown, NJ; Engineered Performance Materials Company, LLC, Saline, MI; EOS of North America, Inc., Chanhassen, MN; GSA Service Company, Sterling, VA; Intelli-Check Mobilisa, Inc., Alexandria, VA; National Research Council, London, Ontario, CANADA; Next Energy Center, Detroit, MI; Raytheon Company, Dallas, TX; Siemens AG, Exton, PA; Support Systems Associates, Inc., Melbourne, FL; and VCAMM Ltd., Belmont, Victoria, AUSTRALIA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notifications disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on July 26, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 8, 2010 (75 FR 54652).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–24398 Filed 9–22–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Employees Compensation Act Medical Report Forms, Claim for Compensation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Federal Employees Compensation Act Medical Report Forms, Claim for Compensation,'' as revised, to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before October 24, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Worker Compensation Programs, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The OWCP administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* The statute provides for the payment of benefits for wage loss and/or for permanent impairment to a scheduled member, arising out of a work related injury or disease. The FECA outlines the elements of pay which are to be included in an individual's pay rate, and sets forth various other criteria for

determining eligibility to and the amount of benefits, including: Augmentation of basic compensation for individuals with qualifying dependents; a requirement to report any earnings during a period that compensation is claimed; a prohibition against concurrent receipt of FECA benefits and benefits from Office of Personnel Management or certain Veterans Administration benefits; a mandate that money collected from a liable third party found responsible for the injury for which compensation has been paid is applied to benefits paid or payable. Forms CA–7, CA–16, CA–17, CA–20, CA–1331, CA–1332, OWCP–5A, OWCP–5B, and OWCP–5C are used for filing claims for wage loss or permanent impairment due to a Federal employment-related injury and to obtain necessary medical documentation to determine whether a claimant is entitled to benefits under the FECA.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0046. The current OMB approval is scheduled to expire on September 30, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 18, 2011 (76 FR 28818).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1240–0046. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs.

Title of Collection: Federal Employees Compensation Act Medical Report Forms, Claim for Compensation.

OMB Control Number: 1240–0046.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 232,853.

Total Estimated Number of Responses: 232,853.

Total Estimated Annual Burden Hours: 21,212.

Total Estimated Annual Other Costs Burden: $109,441.

Dated: September 19, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–24472 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Emergency Review: Comment Request, Guam Military Base Realignment Contractors Recruitment Standards

ACTION: Notice.

SUMMARY: The U.S. Department of Labor (DOL) has submitted the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Guam Military Base Realignment Contractors Recruitment Standards,'' to the Office of Management and Budget (OMB) for review and clearance utilizing emergency review procedures in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) and 5 CFR 1320.13. OMB approval has been requested by October 19, 2011.

DATES: Submit comments on or before October 19, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/ Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission @omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC @dol.gov.*

SUPPLEMENTARY INFORMATION:

Background: Section 2834(a) of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Pub. L. 111–84, enacted October 28, 2009) amended Section 2824(c) of the Military Construction Authorization Act (Pub. L. 110–417, Division B) by adding a new subsection (6). This provision prohibits contractors engaged in construction projects related to the realignment of U.S. military forces from Okinawa to Guam from hiring non-U.S. workers unless the Governor of Guam (Governor), in consultation with the Secretary of Labor (Secretary), certifies that: (1) There is an insufficient number of U.S. workers that are able, willing, and qualified to perform the work; and (2) that the employment of non-U.S. workers will not have an adverse effect on either the wages or the working conditions of U.S. construction workers in Guam.

In order to allow the Governor to make this certification, the NDAA requires contractors to recruit workers in the United States, including in Guam, the Northern Mariana Islands, American Samoa, the U.S. Virgin Islands, and Puerto Rico, according to the terms of a recruitment plan developed and approved by the Secretary. That recruitment plan has been reproduced in full below.

While the DOL has developed the recruitment plan, it has delegated its

duty to oversee contractor recruitment and consult with the Governor to the Guam Department of Labor (GDOL).

Recruitment Plan: Guam military base realignment contractors must take the following actions to recruit U.S. workers:

1. At least 60 days prior to the start date of workers under a base realignment contract, contractors shall:

a. Submit a job posting with GDOL at *http://dol.guam.gov/index.php ?option=com_jobline&Itemid=0 &task=add* or by submitting a completed Job Order (Form GES 514) in person at the Guam Employment Service office. The job posting must be posted on the GDOL Job Bank for at least 21 consecutive days;

b. Post the job opportunity with the state workforce agency's Internet job bank in American Samoa at (*http://www.usworks.com/americansamoa/*), the Commonwealth of the Northern Mariana Islands at *https://marianaslabor.net/employer.asp,* and in the following states:

i. Alaska (*http://www.jobs.state.ak.us*);

ii. California (*http://www.caljobs.ca.gov*);

iii. Hawaii (*http://www.hirenethawaii.com*);

iv. Oregon (*http://www.emp.state.or.us/jobs*); and

v. Washington (*https://fortress.wa.gov/esd/worksource/Employment.aspx*).

The job listing must be posted for at least 21 consecutive days. If for any reason the Internet job bank in American Samoa is not available, the contractor must place an advertisement on two Sundays in a newspaper that is; (1) Of general circulation in that state or territory, (2) has a reasonable distribution and is appropriate to the occupation, and (3) that workers likely to apply for construction jobs will have the opportunity to see the job listing.

c. Post the job opportunity with an Internet-based job bank that is;

i. National in scope, including the entire United States, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico,

ii. Allows job postings for all occupations, and is

iii. Free of charge for job seekers and their intermediaries in One-Stop Career Centers and the U.S. employment service delivery system nationwide.

d. Where the occupation or industry is customarily unionized, contact the local union in Guam in writing to seek U.S. workers who are qualified and who will be available for the job opportunity.

2. The job postings in (1)(a) through (c) must include, at a minimum:

(a) The contractor's name and appropriate contact information for applicants to inquire about the job opportunity or to send applications and/or résumés directly to the employer;

(b) The geographic area of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;

(c) If applicable, a statement that the worker's transportation to Guam will be paid for by the employer;

(d) If applicable, a statement that daily transportation to and from the worksite(s) will be provided by the employer;

(e) A description of the job opportunity with sufficient information to apprise U.S. workers of services or labor to be performed, including the duties, the minimum education and experience requirements, the work hours and days, and the anticipated start and end dates of the job opportunity;

(f) If applicable, a statement that on-the-job training will be provided to the worker;

(g) If applicable, a statement that overtime will be available to the worker and the wage offer for working any overtime hours;

(h) The wage offer, and, if applicable, any other benefits offered; and

(i) A statement that the position is temporary and the total number of job openings the employer intends to fill.

(j) If the employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to secure such lodging, a statement disclosing the provision and cost of the board, lodging, or other facilities, including fringe benefits or assistance to be provided.

The postings are separate and distinct requirements, *i.e.,* a posting under Section 1(b) cannot be used to satisfy the posting requirement under Section 1(c).

3. During the minimum 21-day recruitment period, contractors shall interview all qualified and available Guam and U.S. construction workers who have applied for the employment opportunity.

4. After the close of the recruitment period (not fewer than 32 days before the start date of workers under a contract), for each job listing, the contractor shall provide a report including the following information via e-mail to GDOL at *ndaa.recruitment@dol.guam.gov* documenting efforts to recruit U.S. workers from the United States and all U.S. territories, including:

a. A description of all the recruitment approaches used to recruit realignment workers. The description must include identification of the Internet job bank where the posting occurred, the occupation or trade, a description of wages and other terms and conditions of employment, the date of posting and the job order or requisition number. If newspaper advertisements were used, the description must also include the dates that these ads appeared in the newspaper;

b. A copy of each job posting;

c. A detailed description of how each response to the job postings were handled including;

i. The number of job applications received,

ii. The name of the applicants,

iii. The position applied for,

iv. The final employment determination for each applicant or job candidate, and

v. For each U.S. job applicant not hired, a description of the specific reason for rejecting the applicant for employment, which includes a comparison of the job applicant's skills and experience against the terms listed in the original job posting.

DOL Recruitment Support Activities: ETA will facilitate a nationwide outreach and recruitment effort to maximize hiring of U.S. construction workers, including outreach to the workforce investment system. ETA will do the following:

- Develop and issue a Training and Employment Notice to inform state workforce agencies, state and local workforce investment boards, and One-Stop Career Centers of the anticipated construction employment opportunities on Guam and how those opportunities will be posted;
- Develop telephone scripts for a Toll-Free Help Line directing job seekers to the GDOL job bank;
- Hold a Webinar that will invite participation by the leadership of the GDOL, the Guam Alien Labor Certification Processing Center, the Department of Homeland Security and the Department of Defense (including the Naval Facilities Engineering Command, the Joint Guam Program Office, and the Office of Economic Adjustment) to describe the protocol and procedures for Department of Defense contractors to submit job opportunities and for job seekers to apply for base build-up employment;
- Ensure that DOL offices, including the Office of Unemployment Insurance, the Office of Apprenticeship, Job Corps,

Veterans' Employment and Training Services, and the YouthBuild program, are informed of the construction employment opportunities; and

• Brief pertinent inter-governmental and labor organizations (including the building trades unions) so that they can assist in spreading information about the U.S. worker outreach effort.

Effect of OMB Approval: This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Public Participation: Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section. In order to ensure appropriate consideration, comments should reference OMB ICR Reference Number 201108–1205–001. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: New collection of information (Request for new Control Number).

Agency: Office of the Secretary.

Title of Collection: Repurposed Auto Manufacturing Facilities Study.

Requested Duration of Authorization: Six months from approval.

OMB ICR Reference Number: 201108–1205–001.

Frequency of Collection: On Occasion.

Affected Public: State, Local, and Tribal governments.

Estimated Time per Response: 20 minutes.

Total Estimated Number of Respondents: 25.

Total Estimated Number of Responses: 999.

Total Estimated Annual Burden Hours: 130.

Total Annualized Capital and Startup Costs: $0.

Total Annualized Operation and Maintenance Costs: $0.

Dated: September 19, 2011.

Michel Smyth,

Departmental Clearance Office.

[FR Doc. 2011–24483 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Attestation by Employers Using Crewmembers for Longshore Activities at Locations in the State of Alaska

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Attestation by Employers Using Crewmembers for Longshore Activities at Locations in the State of Alaska,'' (Form ETA–933A) to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before October 24, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by sending an e-mail to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: The DOL Information Management Team by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The information collection is required by section 258 of the Immigration and Nationality Act (INA), 8 U.S.C. 1288. The INA generally prohibits the performance of longshore work by alien crewmembers; however, the INA provides an exception to this prohibition for ports in the State of Alaska. Under this Alaska exception, before any employer may use alien crewmembers to perform longshore activities in the State of Alaska, it must submit an attestation to the Secretary of Labor containing the elements prescribed by the INA at 8 U.S.C. 1288(d). The information provided on Form ETA–933A by employers seeking to use alien crewmembers to perform longshore activities in the State of Alaska permits the DOL to meet Federal responsibilities for program administration, management, and oversight.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0352. The current OMB approval is scheduled to expire on September 30, 2011; however, it should be noted that information collection existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 10, 2011 (76 FR 27090).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–

0352. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title of Collection: Attestation by Employers Using Crewmembers for Longshore Activities at Locations in the State of Alaska.

OMB Control Number: 1205–0352.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 20.

Total Estimated Number of Responses: 20.

Total Estimated Annual Burden Hours: 60.

Total Estimated Annual Other Costs Burden: $0.

Dated: September 19, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–24481 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,151]

Navistar Truck Development and Technology Center, a Subsidiary of Navistar International Corporation Truck Division, Fort Wayne, IN; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated May 31, 2011, a petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Navistar Truck Development and Technology Center, a Subsidiary of Navistar International Corporation, Truck Division, Fort Wayne, Indiana (subject firm). The negative determination was issued on April 13, 2011. The Department's Notice of Determination was published in the **Federal Register** on May 2, 2011 (76 FR 24536). The workers are engaged in activities related to the supply of truck body engineering and design services.

The negative determination was based on the findings that, with respect to Section 222(a) of the Act, Criterion II has not been met because imports of engineering and design services have not increased and there has not been a shift of engineering and design services by the workers' firm to a foreign country. Further, Criterion III has not been met because the worker separations are not attributable to increased imports or a shift of services to a foreign country. Rather, the investigation confirmed that the worker separations are attributable to a consolidation and shift of engineering and design services to another facility located within the United States.

With respect to Section 222(c) of the Act, the investigation revealed that Criterion (2) has not been met because the firm is not a Supplier or Downstream Producer to a firm with a TAA-certified worker group.

In the request for reconsideration, the petitioner stated that ''Navistar has not only increased the amount of work that they outsource, they have increased the number of countries that they outsource that work to.'' The petitioner referenced multiple attachments and stated that the subject firm has joint ventures with China, India, Brazil, and Europe. The petitioner also stated that ''This chart shows Fort Wayne employees doing export work under the heading of Mexico, Brazil, and Export Engineering * * *. The work is now clearly outsourced to India, Brazil, and China according to the organizational chart.''

The petitioner also referenced an attachment and stated ''two job postings for Chief Engineers to work in China to oversee Engineering and Design work.'' The petitioner also referenced an attachment and stated ''shows new work being sent to a Company in Romania * * * shows the name of the on-site coordinator, whose primary responsibility is to prepare and send work via the internet for his counterparts in Romania to perform * * * shows a listing of work that has been transferred to Romania for completion.'' The petitioner also referenced an attachment and stated ''shows the increasing amount of work being sent to Brazil.''

The petitioner also referenced an attachment and stated ''shows an email with an employee break down of the increase in the amount of work being sent to India from a single department. This department sent out 4 jobs to India in 2010, and has already sent nine jobs to India in the first four months of 2011.'' The petitioner also referenced an attachment and stated ''details how IT Services group was partially replaced by a call center/support staff in India.''

The petitioner also referenced an attachment and stated ''Navistar answered the Community's questions about their intentions for the property they were acquiring for the move. * * * This is a headcount reduction across the nation, made possible by the Global Outsourcing. * * *'' The petitioner also referenced an attachment and stated ''Earlier Exhibits detailed that these countries are doing their own engineering and development work, they not simply 'points of sale.'.''

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of September, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–24478 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,089]

Parkdale America, LLC, a Division of Parkdale Mills, Inc., Plant #22, Galax, VA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 22, 2011, a petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment

Assistance (TAA) applicable to workers and former workers of Parkdale America, LLC, a division of Parkdale Mills, Inc., Plant #22, Galax, Virginia (subject firm). The determination was issued on June 8, 2011. The Department's Notice of Determination was published in the **Federal Register** on June 24, 2011 (76 FR 37155). Workers are engaged in activities related to the production of yarn.

The negative determination was based on the Department's findings that the subject firm did not shift production of yarn to a foreign country; the subject firm did not import yarn during the relevant period; and increased U.S. aggregate imports of articles like or directly competitive with yarn produced at the subject firm did not contribute importantly to the subject workers' separation because the imports coincide with increases in sales and production at the subject firm.

Further, the investigation revealed that the subject firm is not a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a).

The determination stated that the workers' separations were attributable to a change of product line.

In the request for reconsideration, the petitioner stated that ''Parkdale #22 Galax plants only customer is in China, the company lowered the production, which eliminated our jobs because the customer lowered the orders * * *.''

The Department has carefully reviewed the petitioner's request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of September, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–24479 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,207]

Notice of Affirmative Determination Regarding Application for Reconsideration; Tecumseh Products Corporation, Ann Arbor, MI

By application dated August 18, 2011, a petitioner requested administrative reconsideration of the termination of investigation regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Tecumseh Products Corporation, Ann Arbor, Michigan (subject firm). The termination of investigation was issued on July 1, 2011. The Department's Notice of Determination was published in the **Federal Register** on July 20, 2011 (76 FR 43351). The workers are engaged in activities related to the production of refrigeration compressors.

The termination was based on the Department's findings that there was not a valid worker group at the subject firm.

In the request for reconsideration, the petitioner stated that ''I do not know you are defining a 'worker group', but the three of us worked in the North American Engineering Organization and Greg Cowen and Trina Higgins reported to me as part of the 'Lead, Records, Standards and Systems Group.' '' The petitioner also included an organizational chart and an ''organization announcement'' (dated December 20, 2010) regarding a re-alignment.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of September, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–24476 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,158; TA–W–73,158A]

Siemens Medical Solutions USA, Inc., Oncology Care Systems Division, Concord, CA; Siemens Medical Solutions USA, Inc., Global Services/Supply Chain Management Including Employees Working Off-Site Throughout the United States Reporting to Malvern, PA, Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor (Department) issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 11, 2010, applicable to workers and former workers of Siemens Medical Solutions USA, Inc. (Siemens), Oncology Care Systems Division, Concord, California (subject firm). The Department's Notice of determination was published in the **Federal Register** on April 23, 2010 (75 FR 21355). The Department's Notice was amended on July 29, 2011 to include the Malvern, Pennsylvania location in support of the subject firm. The amended notice was published in the **Federal Register** on August 12, 2011 (76 FR 50269). The workers are engaged in employment related to the supply of administrative services.

At the request of workers, the Department reviewed the certification for workers of the subject firm.

New information provided by company revealed that worker separations have occurred involving off-site area office employees located throughout the United States who report to the Malvern, Pennsylvania location of Siemens Medical Solutions USA, Inc., Global Services/Supply Chain Management. These employees provided support for the supply of information technology services (such as help desk, application development and support, and data center operations) for the Malvern, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending the certification to include employees of the subject firm who report to Malvern, Pennsylvania facility working at off-site locations throughout the United States.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in services to Germany.

The amended notice applicable to TA–W–73,158 is hereby issued as follows:

''All workers of Siemens Medical Solutions USA, Inc., Oncology Care Systems Division, Concord, California (TA–W–73,158) and Siemens Medical Solutions USA, Inc., Global Services/Supply Chain Management, including employees working at off-site locations throughout the United States, reporting to Malvern, Pennsylvania (TA–W–73,158A), who became totally or partially separated from employment on or after December 22, 2008, through March 11, 2012, and all workers in the groups threatened with total or partial separation from employment on March 11, 2010 through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.''

Signed in Washington, DC, this 14th day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–24468 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,499; TA–W–71,499A; TA–W–71,499B]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–71,499, Sara Lee Corporation, Including On-Site Leased Workers From EDS, Hewitt Packard, Sapphire Technology, and TekSystems, Including On-Site Workers From International Business Machines (IBM), Downers Grove, IL;

TA–W–71,499A, Sara Lee Corporation, Master Data, Cash Applications, Deductions, Collections, Call Center, Information Technology, Accounts Payable, General Accounts, Financial Accounts, Payroll, and Employee Master Data Departments, Including On-Site Leased Workers From Adecco, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstad, RGP, RHI, Sapphire Technology, Select Staffing, TekSystems, the Brighton Group, TraSys, VIP Staffing, and Workforce Temps, Earth City, MO;

TA–W–71,499B, Sara Lee Corporation, Information Technology Department, Including On-Site Leased Workers From Adecco, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstad, RGP, RHI, Sapphire Technology, Select Staffing, Snelling Staffing, TekSystems, the Brighton Group, TraSys, VIP Staffing, and Workforce Temps, Mason, OH.

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 7, 2009, applicable to workers of Sara Lee Corporation, including on-site leased workers from EDS, Hewitt Packard, Sapphire Technology, and TekSystems, Downers Grove, Illinois (TA–W–71,499). The workers provide shared financial services and information technology. The notice was published in the **Federal Register** on December 11, 2009 (74 FR 65799). The notice as amended on October 19, 2010 to include the Earth City, Missouri, Mason, Ohio and on-site leased workers from the above mentioned firms. The amended notice was published in the **Federal Register** on November 3, 2010 (75 FR 67770).

At the request of Illinois State Employment Security, the Department reviewed the certification for workers of the subject firm. New information shows that workers from International Business Machines (IBM) were employed on-site at the Downers Grove, Illinois location of Sara Lee Corporation. The IBM employees support the supply of accounting, information technology and payroll services at the Downers Grove, Illinois location of the subject firm. Department has determined that these workers were sufficiently under the control of Sara Lee Corporation are eligible to be included in this certification.

Accordingly, the Department is amending this certification to include workers from International Business Machines (IBM) employed on-site at the Downers Grove, Illinois location of Sara Lee Corporation.

The amended notice applicable to TA–W–71,499, TA–W–71,499A, and TA–W–71,499B are hereby issued as follows:

All workers of Sara Lee Corporation, including on-site leased workers from EDS, Hewitt Packard, Sapphire Technology, TekSystems and International Business Machines (IBM), Downers Grove, Illinois (TA–W–71,499), who became totally or partially separated from employment on or after June 30, 2008, through October 7, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

All workers of Sara Lee Corporation, Master Data, Cash Applications, Deductions, Collections, Call Center, Information Technology, Accounts Payable, General Accounts, Financial Accounts, Payroll, and Employee Master Data Departments, including on-site leased workers from Adecco, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstand, RGP, RHI, Sapphire Technology, Select Staffing, TekSystems, the Brighton Group, TraSys, VIP Staffing, and Workforce Temps, Earth City, Missouri (TA–W–71,499A), who became totally or partially separated from employment on June 30, 2008, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

All workers of Sara Lee Corporation, Information Technology Department, including on-site leased workers from Adecco, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstand, RGP, RHI, Sapphire Technology, Select Staffing, Snelling Staffing, TekSystems, the Brighton Group, TraSys, VIP Staffing, and Workforce Temps, Mason, Ohio (TA-W–71,499B), who became totally or partially separated from employment on or after June 30, 2008, through February 2, 2009, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 2nd day of September 2011.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2011–24471 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of September 6, 2011 through September 9, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,322; Motorola Solutions, Inc. (MSI), Arlington Heights, IL: July 22, 2010.

TA–W–80,326; OMCO Mould, Inc., Winchester, IN: July 19, 2010.

TA–W–80,340; Bush Industries, Inc., Jamestown, NY: August 7, 2011.

TA–W–80,340A; Bush Industries, Inc., Jamestown, NY: August 7, 2011.

TA–W–80,363; Hutchinson Technology, Inc., Hutchinson, MN: September 19, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,369; St. Louis Post-Dispatch, LLC, St. Louis, MO: October 25, 2010.

TA–W–80,381; Zimmer Holdings, Statesville, NC: August 16, 2010.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,390; Hancock and Moore, Inc., Hickory, NC.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–80,288; Croscill Acquisition, LLC, Oxford, NC.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–80,385; UBP Asset Management LLC (UMPAM), New York City, NY.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W–80,330; Baker Hughes Oilfield Operation, Inc., Houston, TX.

I hereby certify that the aforementioned determinations were issued during the period of September 6, 2011 through September 9, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov*. These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: September 16, 2011.

Del Min Amy Chen,

Certifying Officer, Office, Trade Adjustment Assistance.

[FR Doc. 2011–24477 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 3, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 3, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 15th day of September 2011.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[15 TAA petitions instituted between 9/5/11 and 9/9/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80412	Money Gram (Workers)	Lakewood, CO	09/06/11	09/02/11
80413	Flextronics (Company)	Louisville, KY	09/06/11	08/28/11
80414	Lyondell Basell (State/One-Stop)	Cincinnati, OH	09/06/11	08/02/11
80415	International Aluminum, Subs. (State/One-Stop)	Waxahachie, TX	09/06/11	09/06/11
80416	MPS Content Services (State/One-Stop)	Beverly, MA	09/07/11	09/06/11
80417	F & F Metal Products (State/One-Stop)	Greenville, TX	09/07/11	09/06/11
80418	Mundy Maintenance Services & Operations (Company)	Waynesboro, VA	09/07/11	09/06/11
80419	Centurion Medical Products (Company)	Jeannette, PA	09/07/11	09/06/11
80420	CF Holding Co., subsidiaries—Caldwell Freight Lines, Inc., (Company).	Lenoir, NC	09/08/11	09/07/11
80421	Geiger International (State/One-Stop)	Lake Mills, WI	09/08/11	09/07/11
80422	Coastal Lumber Company (State/One-Stop)	Buckhannon, WV	09/08/11	09/07/11
80423	All-State Insurance (State/One-Stop)	Northbrook, IL	09/09/11	09/08/11
80424	Manistique Papers, Inc. (Company)	Manistique, MI	09/09/11	09/08/11
80425	Portage Mold & Die (Workers)	Ravenna, OH	09/09/11	09/08/11
80426	Kelly Services Working At PCT International (State/One-Stop).	Jackson, MI	09/09/11	09/08/11

[FR Doc. 2011–24469 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,341]

Hartford Financial Services, Inc., Corporate/EIT/CTO Database Management Division, Hartford, CT; Notice of Negative Determination Regarding Application for Reconsideration

By application received September 6, 2011, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers Hartford Financial Services, Inc., Corporate/EIT/CTO Database Management Division, Hartford, Connecticut (The Hartford, Corporate/EIT/CTO Database Management Division). The negative determination was issued on August 19, 2011.

The Department's Notice of determination was published in the **Federal Register** on September 2, 2011 (76 FR 54794). The workers of The Hartford, Corporate/EIT/CTO Database Management Division are engaged in activities related to the supply of financial services. Specifically, the workers provide information technology support for the firm's financial services such as insurance protection and investment products.

The petition was filed on behalf of ''CTO/CCMT database.org'' workers at The Hartford Financial Services, Inc., Hartford, Connecticut. The petition states that the worker separations at the subject firm were due to the acquisition of services from India.

The negative determination was based on the Department's findings that The Hartford Financial Services, Inc. does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Trade Act of 1974, as amended (the Act). In order to be considered eligible to apply for adjustment assistance under Section 223 of the Act, the worker group seeking certification (or on whose behalf certification is being sought) must work for a ''firm'' or appropriate subdivision that produces an article.

In the request for reconsideration, the petitioner asserts that The Hartford Financial Services, Inc. produces an article and that subject firm locations have worker groups eligible to apply for

TAA (TA–W–74,823 through TA–W–74,823G issued on November 22, 2010; TA–W–75,165 issued on February 28, 2011; TA–W–74,396 through TA–W–74,396C issued on December 29, 2010; and TA–W–74,149 through TA–W–74,149A issued on June 30, 2010).

Pursuant to 29 CFR 90.18(c), administrative reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

After the Act as amended in 2009 expired in February 2011, petitions for TAA were instituted under the Act as amended in 2002 (Trade Act of 2002). Because the immediate petition was instituted on August 5, 2011, the applicable statute is the Trade Act of 2002.

Section 222 of the Trade Act of 2002 establishes the worker group eligibility requirements. The requirements include either ''imports of articles like or directly competitive with articles produced by such firm or subdivision have increased'' or ''a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision.''

The request for reconsideration asserts that workers separated at The Hartford Financial Services, Inc., Hartford, Connecticut facility are similar to workers covered by ''other locations of The Hartford Financial Services, Inc. that have been approved.''

The certifications for TA–W–74,823 and TA–W–75,165 were issued based on the Department's findings that the workers' firm supplied a service and that the firm acquired these services from a foreign country. The acquisition of services that was the basis for certification under the Act as amended in 2009 cannot be the basis for certification under the Trade Act of 2002 because the two statutes have different worker group eligibility criteria.

After careful review of the request for reconsideration, previously submitted materials, the applicable statute, and relevant regulation, the Department determines that there is no new information, mistake in fact, or misinterpretation of the facts or of the law.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–24470 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,147]

Travelers Insurance, a Subsidiary of the Travelers Indemnity Company, Personal Insurance Division, Account Processing/Underwriting, Syracuse, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application received July 18, 2011, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Travelers Insurance, a subsidiary of Travelers Insurance, a Subsidiary of The Travelers Indemnity Company, Personal Insurance Division, Account Processing/Underwriting, Syracuse, New York (subject firm).

The negative determination was issued on June 29, 2011. The Department's Notice of determination was published in the **Federal Register** on July 29, 2011 (76 FR 43351). Workers of the subject firm are engaged in activities related to the supply of account and underwriting processing services for Traveler's Insurance.

In the request for reconsideration, the worker asserts that ''we were under the impression that our petition * * * could be merged or added as a supplemental to the Knoxville office petition (#75232).''

On August 31, 2011, the Department issued an amended certification applicable to workers and former workers of The Travelers Indemnity Company, a wholly-owned subsidiary of The Travelers Companies, Inc., Personal Insurance Division, Customer Sales and Service Business Unit, Account Processing/Underwriting Unit, including teleworkers located throughout the United States reporting to, Syracuse, New York (TA–W–75,232A). The Notice of amended certification was published in the **Federal Register** on September 14, 2011 (76 FR 56819).

The Department has reviewed the application for reconsideration, the afore-mentioned amended certification, and the record, and has determined that the petitioning worker group covered under TA–W–80,147 is eligible to apply for Trade Adjustment Assistance under TA–W–75,232A. As such, the Department determines that a reconsideration investigation would serve no purpose.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 15th day of September, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–24480 Filed 9–22–11; 8:45 am]

BILLING CODE 4510–FN–P

MERIT SYSTEMS PROTECTION BOARD

Notice of Opportunity To File Amicus Briefs

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

Overview Information

Merit Systems Protection Board (MSPB or Board) Provides Notice of Opportunity To File Amicus Briefs in the Matters of *Corry B. McGriff* v. *Department of the Navy,* MSPB Docket Number DC–0752–09–0816–I–1; *Alexander Buelna* v. *Department of Homeland Security,* MSPB Docket Number DA–0752–09–0404–I–1; *Joseph Gargiulo* v. *Department of Homeland Security,* MSPB Docket Number SF–0752–09–0370–I–1; and *John Gaitan* v. *Department of Homeland Security,* DA–0752–10–0202–I–1.

SUMMARY: These cases involve employees who were required to have security clearances and were

indefinitely suspended from their positions pending determinations concerning whether their security clearances should be revoked. The Board has recognized that, under certain circumstances, an agency may indefinitely suspend an employee based upon the suspension of access to classified information or pending the agency's investigation regarding that access, where the access is a condition of employment. *See, e.g., Gonzalez* v. *Department of Homeland Security,* 114 M.S.P.R. 318, ¶ 13 (2010); *Jones* v. *Department of the Navy,* 48 M.S.P.R. 680, 682, 689, aff'd as modified on recons., 51 M.S.P.R. 607 (1991), aff'd, 978 F.2d 1223 (Fed. Cir. 1992). On appeal of such an action, the Board lacks the authority to review the merits of the agency's decision to suspend an employee's access to classified material. *Department of the Navy* v. *Egan,* 484 U.S. 518, 530–31 (1988).

The Board may determine, however, whether the agency afforded an employee minimum due process with respect to the employee's constitutionally protected property interest in employment. *See, e.g., Johnson* v. *Department of the Navy,* 62 M.S.P.R. 487, 490–91 (1994); *Kriner* v. *Department of the Navy,* 61 M.S.P.R. 526, 531–35 (1994). In *Cleveland Board of Education* v. *Loudermill,* 470 U.S. 532, 546 (1985), the Court held that an agency's failure to provide a tenured public employee with an opportunity to present a response, either in person or in writing, to an appealable agency action that deprives him of his property right in his employment constitutes an abridgement of his constitutional right to minimum due process of law, *i.e.,* prior notice and an opportunity to respond. In *Gilbert* v. *Homar,* 520 U.S. 924 (1997), the Court explained, in a case involving the suspension of a state employee, how its due process analysis would apply to discipline short of termination.

The Board may also review whether the agency provided the employee with the procedural protections set forth in 5 U.S.C. 7513 in taking an action. *Egan,* 484 U.S. at 530; *see* also *Cheney* v. *Department of Justice,* 479 F.3d 1343, 1344–45 (Fed. Cir. 2007); *King* v. *Alston,* 75 F.3d 657, 661–63 (Fed. Cir. 1996). The Board applies a harmful error analysis in considering statutory violations. *See, e.g., Ward* v. *U.S. Postal Service,* 634 F.3d 1274, 1282 (Fed. Cir. 2011); *Handy* v. *U.S. Postal Service,* 754 F.3d 335, 337–38 (Fed. Cir. 1985).

The cases thus present the following legal issues: (1) Should the Board apply the balancing test set forth in *Homar,* 520 U.S. 924, in determining whether an agency violates an employee's constitutional right to due process in indefinitely suspending him or her pending a security clearance determination; (2) If so, does that right include the right to have a deciding official who has the authority to change the outcome of the proposed indefinite suspension; (3) If the Board finds that an agency did not violate an employee's constitutional right to due process in this regard, how should the Board analyze whether the agency committed harmful procedural error in light of the restrictions set forth in *Egan*, 484 U.S. 518, on the Board's authority to analyze the merits of an agency's security clearance determination.

Interested parties may submit amicus briefs or other comments on these issues no later than October 19, 2011. Amicus briefs must be filed with the Clerk of the Board. Briefs shall not exceed 30 pages in length. The text shall be double-spaced, except for quotations and footnotes, and the briefs shall be on 8½ by 11 inch paper with one inch margins on all four sides.

DATES: All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before October 19, 2011.

ADDRESSES: All briefs shall be captioned with the names of the parties and entitled ''Amicus Brief.'' Only one copy of the brief need be submitted. Briefs must be filed with the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Matthew Shannon, Merit Systems Protection Board, Office of the Clerk of the Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; *mspb@mspb.gov.*

William D. Spencer,

Clerk of the Board.

[FR Doc. 2011–24439 Filed 9–22–11; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–083)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, October 19, 2011, 8:30 a.m. to 5:30 p.m., and Thursday, October 20, 2011, 8:30 a.m. to 4 p.m., local time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Rooms 9H40 and 7H45, respectively, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 800–369–2152, pass code APS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com,* meeting number on October 19 is 998 444 941, and password APS@October19201; the meeting number on October 20 is 998 679 930, and password APS@October20201. The agenda for the meeting includes the following topics:

—Astrophysics Division Update.
—James Webb Space Telescope Follow-Up.
—Wide Field Infrared Space Telescope, Science Definition Team.
—Physics of the Cosmos/Cosmic Origins/Exoplanet Program Analysis Group.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date);

employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: September 19, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–24491 Filed 9–22–11; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of additional meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held via telephone conference call from the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of advising the agency, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, on the development of humanities programming and content for an upcoming *Bridging Cultures Bookshelf* project on the subject of Muslim history and cultures, including discussion of the early planning stages of the project, strategies for shaping and implementing the program, and the portion of the project focusing on Muslim art and architecture. Because the proposed meeting will consider information that is likely to disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that the meeting will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code.

1. *Date:* October 3, 2011.

Time: 2 p.m. to 4 p.m.

Room: 421.

Place: National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (Telephone Conference Call).

Program: This meeting will provide advice about the Bridging Cultures Bookshelf project on the subject of Muslim history and cultures, focusing on the portion about art and architecture.

Elizabeth Voyatzis,

Advisory Committee Management Officer.

[FR Doc. 2011–24401 Filed 9–22–11; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Integrative Activities, #1373; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Ad Hoc Advisory Committee on the Merit Review Process (MRPAC).

Date/Time: October 12, 2011; 12 p.m.–4 p.m., EDT.

Place: National Science Foundation, 4201 Wilson Boulevard, Room II–515, Arlington, VA.

Type of Meeting: Open.

Contact Person: Ms. Victoria Fung, National Science Foundation 4201 Wilson Boulevard, Room II–515, Arlington, VA 22230. E-mail: *vfung@nsf.gov*. Telephone: (703) 292–8040.

If you plan to attend the meeting, please send an e-mail with your name and affiliation to the individual listed above, by the day before the meeting, so that a visitor badge can be prepared.

Purpose of Meeting: To provide advice concerning issues related to NSF's merit review process.

Agenda:

- Welcome.
- Discussion of experiments with enhancements to the merit review process.
- Update on outreach activities.

Dated: September 20, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–24486 Filed 9–22–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0302]

Standard Format and Content of License Applications for Conventional Uranium Mills

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; withdrawal.

SUMMARY: On May 30, 2008 (73 FR 31152), the U.S. Nuclear Regulatory Commission (NRC) published for public comment a notice of issuance and availability of Draft Regulatory Guide (DG)–3024, ''Standard Format and Content of License Applications for Conventional Uranium Mills.'' DG–3024 was a proposed Revision 2 of Regulatory Guide (RG) 3.5. However, upon further consideration the NRC has decided not to revise RG 3.5 at this time. For this reason, DG–3024 will be withdrawn. The comment period closed on August 4, 2008, and 6 comments were received. The comments received will be considered and incorporated as appropriate if the NRC decides to revise RG 3.5 in the future.

ADDRESSES: You can access publicly available documents related to this action using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this action can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0302. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Hector Luis Rodriguez-Luccioni, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–251–7685, e-mail: *Hector.Rodriguez-Luccioni@nrc.gov.*

Dated at Rockville, Maryland this 15th day of September, 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–24475 Filed 9–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–238; NRC–2011–0222]

Environmental Assessment and Finding of No Significant Impact for the N.S. Savannah; License NS–1, Baltimore, MD

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: John Hickman, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Mail Stop: T8F5, Washington, DC 20555–00001. Telephone: (301) 415–3017; e-mail: *john.hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) staff is considering a request dated November 8, 2010, by the U.S. Department of Transportation, Maritime Administration (MARAD, the licensee) requesting exemptions from the security requirements in Title 10 of the Code of Federal Regulations (10 CFR) part 73 and 10 CFR 50.54(p) for the N.S. Savannah (NSS).

This Environmental Assessment (EA) has been developed in accordance with the requirements of 10 CFR 51.21.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would eliminate the physical security requirements from the 10 CFR Part 50 licensed site because the NSS spent fuel elements were returned to the AEC and transferred by the AEC for reprocessing at its Savannah River site in South Carolina. There is no longer any special nuclear material (SNM) located within the NSS other than that contained in plant systems as residual contamination.

Part of this proposed action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as part of this action is an exemption from the requirements of the Commission's regulations and: (i) There is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an EA or an environmental impact statement. This EA was prepared for the part of the proposed action not involving safeguards plans (i.e.; transportation of SNM, interaction with emergency planning, and background checks.)

Need for Proposed Action

Sections 50.54 and 73.55 of 10 CFR require that licensees establish and maintain physical protection and security for activities involving SNM within the 10 CFR Part 50 licensed area of a facility. The proposed action is needed because there is no longer any nuclear fuel in the 10 CFR Part 50 licensed facility that requires protection against radiological sabotage or diversion. The proposed action will allow the licensee to conserve resources for decommissioning activities.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that exempting the facility from physical protection security requirements will not have any adverse environmental impacts.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

The alternative is the no-action alternative, under which the staff would deny the exemption request. This denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are similar, therefore the no-action alternative is not further considered.

Conclusion

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

Agencies and Persons Consulted

In accordance with its stated policy, on July 1, 2011, the staff consulted with the Maryland State official, of the Maryland Department of the Environment, regarding the environmental impact of the proposed action. The State official had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

For further details with respect to the proposed action, see the licensee's letter dated November 8, 2010 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML103200198). Documents related to

this action, including the application and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm.html.* From this site, you can access text and image files of NRC's public documents.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 15th day of September, 2011.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–24474 Filed 9–22–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Week of September 26, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Additional Items To Be Considered

Week of September 26, 2011

Tuesday, September 27, 2011

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

a. *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4)—Appeal of LBP–10–21 (Tentative)

b. *Luminant Generation Company LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), Intervenors' Petition for Review Pursuant to 10 C.F.R. § 2.341 (Mar. 11, 2011) (Tentative)

c. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), Staff Petition for Review of LBP–10–20 (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.* /RA/

Dated: September 20, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–24606 Filed 9–21–11; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet on November 4, 2011, at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

The Council will hear public testimony about the locality pay program, review the results of pay comparisons, and formulate its recommendations to the President's Pay Agent on pay comparison methods, locality pay rates, and locality pay areas and boundaries for 2013. The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to submit testimony or present material to the Council at the meeting.

DATES: November 4, 2011, at 10 a.m.

Location: Office of Personnel Management, 1900 E Street, NW., Room 5H17, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerome D. Mikowicz, Deputy Associate Director, Pay and Leave, Office of Personnel Management, 1900 E Street, NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–4264; or e-mail at *pay-leave-policy@opm.gov.*

For the President's Pay Agent.

John Berry,

Director.

[FR Doc. 2011–24490 Filed 9–22–11; 8:45 am]

BILLING CODE 6325–39–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Board Votes To Close September 29, 2011, Meeting

By notation vote on September 19, 2011, a majority of the members of the Board of Governors of the United States Postal Service voted to hold and close to public observation a meeting to be held via teleconference on September 29, 2011. The Board determined that no earlier public notice was possible.

Items Considered

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that

the meeting was properly closed under the Government in the Sunshine Act.

Contact Person for More Information

Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2011–24704 Filed 9–21–11; 4:15 pm]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12824 and #12825]

New York Disaster Number NY–00110

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4031–DR), dated 09/13/2011.

Incident: Remnants of Tropical Storm Lee.

Incident Period: 09/07/2011 and continuing.

DATES: *Effective Date:* 09/14/2011.

Physical Loan Application Deadline Date: 11/14/2011.

EIDL Loan Application Deadline Date: 06/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York, dated 09/13/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Schenectady

Contiguous Counties: (Economic Injury Loans Only):

New York: Albany, Saratoga.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24419 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12819]

New Mexico Disaster #NM–00023 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of New Mexico, dated 09/13/2011.

Incident: Las Conchas Wildfire.

Incident Period: 06/26/2011 through 08/03/2011.

Effective Date: 09/13/2011.

EIDL Loan Application Deadline Date: 06/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Los Alamos, Sandoval.

Contiguous Counties:

New Mexico: Bernalillo, Cibola, McKinley, Rio Arriba, San Juan, Santa Fe.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for economic injury is 128190.

The State which received an EIDL Declaration # is New Mexico.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: September 13, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–24429 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12813 and #12814]

Indiana Disaster #IN–00036

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated 09/12/2011.

Incident: Severe Storms, Hail, Tornadoes and Flooding.

Incident Period: 04/19/2011 through 06/06/2011.

Effective Date: 09/12/2011.

Physical Loan Application Deadline Date: 11/14/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/12/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Decatur, Gibson, Monroe, Posey, Vanderburgh.

Contiguous Counties:

Indiana: Bartholomew, Brown, Franklin, Greene, Jackson, Jennings, Knox, Lawrence, Morgan, Owen, Pike, Ripley, Rush, Shelby, Warrick.

Illinois: Gallatin, Wabash, White.

Kentucky: Henderson, Union.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	

	Percent
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12813 B and for economic injury is 128140.

The States which received an EIDL Declaration # are Indiana, Illinois, Kentucky.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 12, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–24418 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12817 and #12818]

Georgia Disaster #GA–00036

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of GEORGIA dated 09/13/2011.

Incident: Tornado.

Incident Period: 09/05/2011.

Dates: Effective Date: 09/13/2011.

Physical Loan Application Deadline Date: 11/14/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cherokee.

Contiguous Counties:

Georgia: Bartow, Cobb, Dawson, Forsyth, Fulton, Gordon, Pickens.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners without credit available elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12817 C and for economic injury is 12818 0.

The State which received an EIDL Declaration # is Georgia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

September 13, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–24416 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12824 and #12825]

New York Disaster #NY–00110

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New York (FEMA–4031–DR), dated 09/13/2011.

Incident: Remnants of Tropical Storm Lee.

Incident Period: 09/07/2011 and continuing.

Effective Date: 09/13/2011.

Physical Loan Application Deadline Date: 11/14/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/13/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Broome, Chenango, Delaware, Otsego, Tioga.

Contiguous Counties (Economic Injury Loans Only):

New York: Chemung, Cortland, Greene, Herkimer, Madison, Montgomery, Oneida, Schoharie, Sullivan, Tompkins, Ulster.

Pennsylvania: Bradford, Susquehanna, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128248 and for economic injury is 128250.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24422 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12826 and #12827]

Maine Disaster #ME–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major

disaster for Public Assistance Only for the State of Maine (FEMA–4032–DR), dated 09/13/2011.

Incident: Tropical Storm Irene.

Incident Period: 08/27/2011 through 08/29/2011.

Effective Date: 09/13/2011.

Physical Loan Application Deadline Date: 11/14/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/13/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Franklin, Oxford, York.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128268 and for economic injury is 128278.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24430 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12778 and #12779]

New York Disaster Number NY–00109

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 09/05/2011.

Effective Date: 09/14/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 08/31/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Franklin, Hamilton, Herkimer.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24420 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12770 and #12771]

Puerto Rico Disaster Number PR–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated 08/27/2011.

Incident: Hurricane Irene.

Incident Period: 08/21/2011 through 08/24/2011.

Effective Date: 09/13/2011.

Physical Loan Application Deadline Date: 10/26/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 08/27/2011, is hereby amended to establish the incident period for this disaster as beginning 08/21/2011 and continuing through 08/24/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24427 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12776 and #12777]

New York Disaster Number NY–00108

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 09/05/2011.

Effective Date: 09/14/2011.

Physical Loan Application Deadline Date: 10/31/2011.

EIDL Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York, dated 08/31/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Herkimer.
Contiguous Counties: (Economic Injury Loans Only):
New York: Lewis, Saint Lawrence.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24424 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12815 and #12816]

Texas Disaster Number TX–00381

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4029–DR), dated 09/09/2011.
Incident: Wildfires.
Incident Period: 08/30/2011 and continuing.
Effective Date: 09/14/2011.
Physical Loan Application Deadline Date: 11/08/2011.
EIDL Loan Application Deadline Date: 06/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 09/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
Colorado, Houston, Leon, Travis, Williamson.
Contiguous Counties: (Economic Injury Loans Only):
Texas: Anderson, Angelina, Austin, Bell, Blanco, Brazos, Burnet, Cherokee, Freestone, Hays, Jackson, Lavaca, Limestone, Madison, Milam, Robertson, Trinity, Walker, Wharton.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24421 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12807 and #12808]

Pennsylvania Disaster Number PA–00043

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Pennsylvania (FEMA–4025–DR), dated 09/03/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 08/30/2011.

Effective Date: 09/13/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Pennsylvania, dated 09/03/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Delaware, Luzerne, Philadelphia, Pike, Wayne.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24428 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12768 and #12769]

Puerto Rico Disaster Number PR–00014

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated 08/27/2011.
Incident: Hurricane Irene.
Incident Period: 08/21/2011 through 08/24/2011.
Dates: Effective Date: 09/13/2011.
Physical Loan Application Deadline Date: 10/26/2011.
EIDL Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of Puerto Rico, dated 08/27/2011 is hereby amended to establish the incident period for this disaster as beginning 08/21/2011 and continuing through 08/24/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24423 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12768 and #12769]

Puerto Rico Disaster Number PR–00014

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated 08/27/2011.

Incident: Hurricane Irene.

Incident Period: 08/21/2011 Through 08/24/2011.

Effective Date: 09/13/2011.

Physical Loan Application Deadline Date: 10/26/2011.

EIDL Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of PUERTO RICO, dated 08/27/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Fajardo, Gurabo, Las Piedras, Naguabo, Naranjito, Rio Grande, San Lorenzo, Trujillo Alto, Vega Baja, Vieques, Villalba.

Contiguous Counties: (Economic Injury Loans Only):

Puerto Rico: Manati, Toa Alta, Vega Alta.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24425 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12790 and #12791]

North Carolina Disaster Number NC–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4019–DR), dated 09/01/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 through 09/01/2011.

Effective Date: 09/13/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of North Carolina, dated 09/01/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Vance.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–24426 Filed 9–22–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes extensions and revisions of OMB-approved information collections, and an information collection in use without an OMB number.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 22, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above email address.

1. *Incoming and Outgoing Intergovernmental Personnel Act Assignment Agreement—5 CFR 334—0960–NEW.* The Intergovernmental Personnel Act (IPA) mobility program provides for the temporary assignment of civilian personnel between the Federal Government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations. The Office of Personnel Management (OPM) created a generic form, the OF–69, for agencies to use as a template when collecting information for the IPA assignment. The OF–69 collects specific information about the agreement including the name, social security number, job title, salary, classification, and address of the employee enrolled in the program, as well as the type of assignment, reimbursement arrangement, and explanation as to how the assignment will benefit both SSA and the non-federal organization involved in the exchange.

OPM directs agencies to use their own forms for recording these agreements. Therefore, SSA modified the OF–69 to meet our needs, creating the SSA–187 for incoming employees, and the SSA–188 for outgoing employees. Respondents are the individuals we describe above who participate in the IPA exchange with SSA.

Type of Request: Existing collection in use without an OMB number.

Respondent type	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Non-federal employee, SSA–187	10	1	30	5
Non-federal employer signers, both SSA–187 & SSA–188	20	1	5	2
Totals	30			7

2. *Coverage of Employees of State and Local Governments—20 CFR 404, Subpart M—0960–0425.* The Code of Federal Regulations at 20 CFR part 404, Subpart M, prescribes the rules for states submitting reports of deposits and recordkeeping to SSA. States (and interstate instrumentalities) are required to provide wage and deposit contribution information for pre-1987 periods. Not all the states have completely satisfied their pending wage report and contribution liability with SSA for pre-1987 tax years. These regulations are needed until all pending items with all states are closed out, and to provide for collection of this information in the future, if necessary. The respondents are state and local governments or interstate instrumentalities.

Type of Request: Revision of an OMB-approved information collection.

Regulation section	Number of respondents	Frequency of response	Average burden per response (hours)	Estimated total annual burden (hours)
404. 1204 (a) & (b)	52	1	0.5	26
404.1215	52	1	1	52
404. 1216 (a) & (b)	52	1	1	52
Total	156			130

3. *Medical Report on Adult with Allegation of Human Immunodeficiency Virus Infection; Medical Report on Child with Allegation of Human Immunodeficiency Virus Infection—20 CFR 416.993–416.994—0960–0500.* SSA or state agencies (Disability Determination Services) use Forms SSA–4814–F5 and SSA–4815–F6 to collect information necessary to determine if an individual with the human immunodeficiency virus infection, who is applying for Supplemental Security Income (SSI), meets the requirements for presumptive disability payments. The respondents are the medical sources of the applicants for SSI disability payments.

Type of Request: Revision of an OMB-approved information collection.

Form	Number of respondents	Frequency of response	Response time (minutes)	Estimated total annual burden (hours)
SSA–4814–F5	46,200	1	10	7,700
SSA–4815–F6	12,900	1	10	2,150
Totals	59,100			9,850

4. *Public Information Campaign—0960–0544.* Periodically, SSA sends various public information materials, including public service announcements, news releases, and educational tapes, to public broadcasting systems so they can inform the public about the various programs and activities SSA conducts. SSA frequently sends follow-up business reply cards for these public information materials to obtain suggestions for improving them. The respondents are broadcast television sources.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,000.

Frequency of Response: 2.

Average Burden per Response: 1 minute.

Estimated Total Annual Burden: 33 hours.

5. *Redetermination of Eligibility for Help with Medicare Prescription Drug Plan Costs—0960–0723.* As per the requirements of the *Medicare Modernization Act of 2003* (Pub. L. 108–173), SSA conducts low-income subsidy eligibility redeterminations for Medicare beneficiaries who currently receive the Medicare Part D subsidy and who meet certain criteria. Respondents complete Form SSA–1026–REDE under the following circumstances: (1) When individuals became entitled to the Medicare Part D subsidy during the past 12 months; (2) if they were eligible for the Part D subsidy for more than 12 months; or (3) if they reported a change in income, resources, or household size. Part D beneficiaries complete the SSA–1026–SCE when they need to report a potentially subsidy-changing event, including the following: (1) Marriage, (2) spousal separation, (3) divorce, (4) annulment of a marriage, (5) spousal death, or (6) moving back in with one's spouse following a separation. The respondents are current recipients of the Medicare Part D low-income subsidy who will undergo an eligibility redetermination for one of the reasons mentioned above.

Type of Request: Extension of an OMB-approved information collection.

Form	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1026–OCR–MS–SCE	11,400	1	18	3,420
SSA–1026–OCR–SM–REDE	225,000	1	18	67,500
Total	236,400			70,920

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than October 24, 2011. Individuals can obtain copies of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Statement of Claimant or Other Person—Medical Resident FICA Refund Claims—20 CFR 404.702 and 416.570—0960–0786. The Internal Revenue Service (IRS) is contacting medical residents (and their employers) who filed Federal Insurance Contributions Act (FICA) refund claims from 1993 through 2005. Those medical residents who claimed their residencies were actually training, not employment, should not have been subject to FICA tax. The IRS made a decision to honor these claims and issue a full refund of FICA tax, plus statutory interest, to those who wish to participate in the refund resolution. SSA will remove wages from the participating residents' earnings records for the period of the refund requests, which will cause the residents' recorded earnings to decrease. This not only affects earnings for future retirement benefits, but also could adversely affect those residents (or their beneficiaries) who are currently receiving Social Security benefits.

To ensure they understand the potential impact on their benefits, SSA will call those residents who will be adversely affected and explain the effect on their Social Security benefits if they accept the IRS FICA refund. If SSA cannot reach the resident by phone, we will send a contact letter and the SSA–795–OP2 to the resident to complete and return to SSA to document the decision. Once we have the information, we will forward the signed forms to the IRS for the residents who no longer want the FICA refund.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 496.

Frequency of Response: 1.

Average Burden per Response: 4 minutes.

Estimated Total Annual Burden: 33 hours.

Dated: September 20, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–24437 Filed 9–22–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7610]

Culturally Significant Objects Imported for Exhibition Determinations: ''Impressionism: Masterworks on Paper''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Impressionism: Masterworks on Paper'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Milwaukee Art Museum, Milwaukee, WI, from on or about October 15, 2011, until on or about January 8, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 19, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–24540 Filed 9–22–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7609]

Bureau of Educational and Cultural Affairs; Exchange Visitor Program; Summer Work Travel Program Sponsor On-Site Reviews

ACTION: Notice.

SUMMARY: Pursuant to the Mutual Educational and Cultural Exchange Act of 1961 (the ''Act''), the Department of State (Department) is authorized to facilitate and direct educational and cultural exchange activities in order to develop and promote mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. These exchanges, conducted by Department-designated sponsors assist the Department in furthering the foreign policy objectives of the United States. By this Notice, and in order to enhance its continued oversight and monitoring of designated sponsors, the Department announces its intent to conduct on-site reviews of sponsors in the Summer Work Travel Program to evaluate regulatory compliance with Program regulations set forth at 22 CFR Part 62.

The Summer Work Travel Program provides foreign college and university students the opportunity to work and travel in the United States during their extended academic break (i.e., summer vacation) for a period not to exceed four months. On April 26, 2011, the Department published in the **Federal Register**, an Interim Final Rule governing the Summer Work Travel category of the Exchange Visitor Program. In that rulemaking, the Department explained its three-step approach to addressing a number of concerns regarding sponsor

administration of this program. Step one occurred in January 2011 when the Department adopted a pilot program to enhance protections for foreign nationals from Belarus, Bulgaria, Moldova, Romania, Russia, and the Ukraine (''Pilot Program''). Step two was the Interim Final Rule, which incorporated many of the concepts of the Pilot Program into the overall Summer Work Travel program regulations. Now, as step three, the Department intends to conduct on-site reviews of the largest Summer Work Travel program sponsors to monitor sponsor performance, ''to assess category-wide regulatory compliance and to consult with sponsors about implementation of the Interim Final Rule.'' The Department's close monitoring of Summer Work Travel sponsors during the summer of 2011 has resulted in a modification to its plans for on-site reviews. Specifically, the Department evaluated all Summer Work Travel sponsors' compliance with program regulations regarding the maintenance of current and accurate records in the Student and Exchange Visitor Information System (SEVIS) for the period September 1, 2009 through August 30, 2010. It also reviewed Summer Work Travel-related complaints for the 2011 summer season and monitored the media for additional reports of program problems. As a result of these efforts, the Department has determined that it will not visit sponsors based solely on their size, but instead will conduct compliance reviews of those designated sponsors whose compliance with the relevant Exchange Visitor Program regulations deserve closer examination by the Department.

Currently there are 51 designated exchange sponsor entities in the Summer Work Travel category. Of those, the Department has identified 14 sponsors that will be part of in the upcoming compliance review. Although the Department may later decide to evaluate additional sponsors, at this time, it intends to visit these 14 sponsors (which together sponsor approximately 65% of all Summer Work Travel participants) sometime between October and December 2011. On average, it is expected that each on-site review will take two full business days and will be preceded ten work days' in advance by written notice and a request for certain specified documents.

As noted above, these on-site reviews will focus on evaluating the overall program administration and the effectiveness of the modifications to sponsors' program administration resulting from implementation of the Interim Final Rule and the Pilot Program. A primary goal of these reviews is to assess whether the sponsors have been able ''to comply and remain in continual compliance with all provisions of Part 62'' (22 CFR 62.3(b)(1)). To this end, the reviews will focus on sponsor compliance with the Pilot Program guidelines and participant monitoring requirements, maintenance of accurate SEVIS records, and sponsors' relationships with third parties they have engaged to assist in carrying out the core programmatic functions inherent in the administration of exchange visitor programs, as set forth in the regulations in Part 62 (*i.e.,* screening, selection, orientation, placement, monitoring, and the promotion of mutual understanding). Other areas of interest may include sponsors' roles in assisting participants in finding suitable housing; decision-making processes (including the numbers of participants accepted); self-imposed compliance mechanisms; procedures for handling student participant problems (including finding new jobs for those whose pre-arranged placements were unsatisfactory); and policies for refunding deposits or payments to student participants.

Finally, the Department intends to use these reviews as an opportunity for sponsors to provide feedback on the Pilot Program and the Interim Final Rule in general, and more specifically, sponsors' experience with the relevant new regulatory provisions during the summer season of 2011. Feedback will be used to assist in issuing the Final Rule. Best practices will be collected from the on-site reviews and shared with the wider sponsor community. Sponsors who are not included in these reviews and wish to comment should address their comments and concerns to the Department at *JVisas@State.gov*.

The Department believes these compliance reviews are one of many critical steps that can help ensure the Summer Work Travel program meets the underlying goals of the Act while also allowing participants to enjoy safe and successful exchange program experiences conducted within the parameters of the Exchange Visitor Program regulations.

Dated: September 16, 2011.

Rick A. Ruth,

Deputy Assistant Secretary for Private Sector Exchange, Acting, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–24551 Filed 9–22–11; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on October 13 and October 14, 2011, to obtain views and advice on the topic of the regulation of non-navigable floating structures on TVA reservoirs.

The RRSC was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The meeting agenda includes the following:

1. Introductions.
2. TVA Updates: Feedback from the TVA Board of Directors on the Council's previous advice, a summary of the Natural Resource Plan implementation plan for fiscal year 2012, and information about TVA's Recreation Program under the Natural Resource Plan.
3. Presentation(s) concerning the issues surrounding the regulation of non-navigable floating structures on TVA reservoirs.
4. Public Comments.
5. Council Discussion and Advice.

The RRSC will hear opinions and views of citizens by providing a public comment session. The public comment session will be held at 10 a.m., EDT, on Friday, October 14. Persons wishing to speak are requested to register at the door by 9 a.m., EDT, on Friday, October 14 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Thursday, October 13, 2011, from 8 a.m. to 10 a.m., EDT, and on Friday, October 14, 2011, from 8 a.m. to Noon, EDT.

ADDRESSES: The meeting will be held in the Auditorium of the TVA Headquarters at, 400 West Summit Hill Drive, Knoxville, TN 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Beth Keel, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902, (865) 632–6113.

Dated: September 19, 2011.

Anda A. Ray,

Senior Vice President and Environmental Executive, Environment and Technology, Tennessee Valley Authority.

[FR Doc. 2011–24535 Filed 9–22–11; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 22, 2011, vol. 76, no. 141, page 44080–44081. Regulation generates a need for new designated pilot examiners and designated airworthiness representatives to support the certification of new light-sport aircraft, pilots, flight instructors, and ground instructors. This submission removes reported burden associated with this collection but previously approved by OMB under existing control numbers 2120–0018, 2120–0022, 2120–0033, and 2120–0042.

DATES: Written comments should be submitted by October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0690.

Title: Certification of Airmen for the Operation of Light-Sport Aircraft.

Form Numbers: FAA form 8710–11, 8710–12, 8050–88a.

Type of Review: Renewal of an information collection.

Background: The Final Rule ''Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft'' [69 FR 44771] generated a need for new designated pilot examiners and designated airworthiness representatives to support the certification of new light-sport aircraft, pilots, flight instructors, and ground instructors.

Respondents: Approximately 57,214 respondents.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.25 hours.

Estimated Total Annual Burden: 45,775.24 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 19, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–24456 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Use of Certain Personal Oxygen Concentrator (POC) Devices on Board Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. A Special Federal Aviation Regulation requires passengers who intend to use an approved POC to present a physician statement before boarding. The flight crew must then inform the pilot-in-command that a POC is on board.

DATES: Written comments should be submitted by November 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–0702.

Title: Use of Certain Personal Oxygen Concentrator (POC) Devices on Board Aircraft.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: In the SFAR, we require the pilot in command to be apprised whenever a passenger, whose physician's statement prescribes extensive use of oxygen, brings a POC on board the aircraft. Also, we require passengers who have a medical need to use a POC during flight to have a signed physician statement in their possession that describes the oxygen therapy needed for the duration of the flight. The information provided to the pilot in command is used to determine whether an inflight diversion to an airport where medical assistance for the passenger may be needed in the event the passenger's POC fails to operate or the aircraft experiences cabin pressurization difficulties. The physician statement will be used by the operator to verify the need for the device, the oxygen therapy needed to be provided by use of the POC, and the oxygen needs of the passenger in case of emergency.

Respondents: Approximately 1,735,000 passengers.

Frequency: Information is collected as needed.

Estimated Average Burden per Response: 6 minutes.

Estimated Total Annual Burden: 172,694 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the

estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 19, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–24465 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration Renewal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Aircraft owners are required to complete the Aircraft Registration Renewal to verify the registration information and renew registration triennially. The information collected on an Aircraft Re-Registration Application, AC Form 8050–1A will be used by the FAA to verify and update aircraft registration information collected for an aircraft when it was first registered.

DATES: Written comments should be submitted by November 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0729.

Title: Aircraft Registration Renewal.

Form Numbers: AC Form 8050–1A.

Type of Review: Renewal of an information collection.

Background: The information collected on an Aircraft Re-Registration Application, AC Form 8050–1A will be used by the FAA to verify and update aircraft registration information collected for an aircraft when it was first registered using the Aircraft Registration Application, AC Form 8050–1 (approved under OMB control number 2120–0042). The updated registration database will then be used by the FAA to monitor and control U.S. airspace and to distribute safety notices and airworthiness directives to aircraft owners. Law enforcement and national security agencies will use the database to support drug interdiction and activities related to national security.

Respondents: Approximately 72,996 aircraft owners.

Frequency: Information is collected triennially.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 36,498 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 19, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–24458 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Notice of Landing Area Proposal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. FAA Form 7480–1 (Notice of Landing Area Proposal) is used to collect information about any construction, alteration, or change to the status or use of an airport.

DATES: Written comments should be submitted by November 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0036.

Title: Notice of Landing Area Proposal.

Form Numbers: FAA Form 7480–1.

Type of Review: Renewal of an information collection.

Background: FAR Part 157 requires that each person who intends to construct, deactivate, or change the status of an airport, runway, or taxiway must notify the FAA of such activity. The information collected provides the basis for determining the effect the proposed action would have on existing airports and on the safe and efficient use of airspace by aircraft, the effects on existing or contemplated traffic patterns of neighboring airports, the effects on the existing airspace structure and projected programs of the FAA, and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal.

Respondents: Approximately 1500 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 45 minutes.

Estimated Total Annual Burden: 1,125 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 19, 2011.

Carla Scott,

FAA Information Collection Clearance Officer.

[FR Doc. 2011–24459 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: New England Region Aviation Expo Database

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The New England Region Aviation Expo database performs conference registration and helps plan the logistics and non-pilot courses for the expo.

DATES: Written comments should be submitted by November 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0738.

Title: New England Region Aviation Expo Database.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The data will be used by a collaboration of volunteers from different Lines of Business within the FAA to form a committee. The committee members consist of Regions and Center (ARC), Airports (ARP), Air Traffic Organization (ATO), and Aviation Safety (AVS). The committee members will use the data to help plan the courses and expo itself. The New England Region Aviation Expo database performs conference registration and helps plan logistics and non-pilot courses.

Respondents: Approximately 500 participants.

Frequency: Information is collected once annually.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 2 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 19, 2011.

Carla Scott,

FAA Information Collection Clearance Officer.

[FR Doc. 2011–24457 Filed 9–22–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 519 (Sub-No. 5)]

Renewal of National Grain Car Council

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of intent to renew charter.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended 5 U.S.C., App. (FACA), notice is hereby given that the Surface Transportation Board intends to renew the charter of the National Grain Car Council (NGCC).

ADDRESSES: A copy of the charter is available at the Library of the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and on the Board's Web site at *http://www.stb.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Tom Brugman, Designated Federal Official, at (202) 245–0281. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: The NGCC functions as a continuing working group to facilitate private-sector solutions and recommendations to the STB on matters affecting grain transportation. The NGCC functions solely as an advisory body, and complies with the provisions of FACA.

The NGCC consists of approximately 40 members, excluding the governmental representatives. Members comprise a balanced representation of executives knowledgeable in the transportation of grain, including not less than 14 members from the Class I railroads (one marketing and one car management representative from each Class I), 7 representatives from Class II and III carriers, 14 representatives from grain shippers and receivers, and 5 representatives from private car owners and car manufacturers. The Chairman and Vice Chairman of the Board are ex officio (non-voting) members of the NGCC.

The NGCC meets at least annually, and meetings are open to the public, consistent with the Government in the Sunshine Act, Pub. L. 94–409.

Further information about the NGCC is available on the Board's Web site at *http://www.stb.dot.gov* and at the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Decided: September 19, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–24449 Filed 9–22–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 670 (Sub-No. 3)]

Renewal of Rail Energy Transportation Advisory Committee

AGENCY: Surface Transportation Board.

ACTION: Notice of intent to renew charter.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C., App. (FACA), notice is hereby given that the Surface Transportation Board (Board) intends to renew the charter of the Rail Energy Transportation Advisory Committee (RETAC).

ADDRESSES: A copy of the charter is available at the Library of the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and on the Board's Web site at *http://www.stb.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman, Designated Federal Official, at (202) 245–0386. [Assistance for the hearing impaired is available through the Federal

Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: RETAC was established by the Board on September 24, 2007, to provide advice and guidance to the Board, on a continuing basis, and to provide a forum for the discussion of emerging issues and concerns regarding the transportation by rail of energy resources, including, but not necessarily limited to, coal and biofuels, such as ethanol. RETAC functions solely as an advisory body and complies with the provisions of FACA and its implementing regulations.

RETAC consists of up to 25 voting members, excluding the governmental representatives. The membership comprises a balanced representation of individuals experienced in issues affecting the transportation of energy resources, including not less than: 5 representatives from the Class I railroads; 3 representatives from Class II and III railroads; 3 representatives from coal producers; 5 representatives from electric utilities (including at least one rural electric cooperative and one state- or municipally-owned utility); 4 representatives from biofuel feedstock growers or providers, and biofuel refiners, processors, and distributors; and 2 representatives from private car owners, car lessors, or car manufacturers. These members are serving in a representative capacity for this Committee. The Committee may also include up to 3 members with relevant experience but not necessarily affiliated with one of the aforementioned industries or sectors. STB Board Members are *ex officio* (non-voting) members of RETAC.

RETAC meets at least twice a year, and meetings are open to the public, consistent with the Government in the Sunshine Act, Public Law 94–409.

Further information about RETAC is available on the Board's Web site at *http://www.stb.dot.gov* and at the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Decided: September 19, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–24440 Filed 9–22–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 20, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before October 24, 2011 to be assured consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0854.

Type of Review: Extension without change of a currently approved collection.

Title: Section 301.7245–3, Discharge of Liens (TD 9410).

Abstract: The Internal Revenue Service needs this information in processing a request to sell property of a tax lien at a non-judicial sale. This information will be used to determine the amount, if any, to which the tax lien attaches.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 200.

OMB Number: 1545–1244.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 9013, Limitation on Passive Activity Losses and Credits—Treatment on Self-Charged Items of Income and Expense.

Abstract: These regulations provide guidance on the treatment of self-charged items of income and expense under section 469. The regulations re-characterize a percentage of certain portfolio income and expense as passive income and expense (self-charged items) when a taxpayer engages in a lending transaction with a partnership or an S corporation (passthrough entity) in which the taxpayer owns a direct or indirect interest and the loan proceeds are used in a passive activity. Similar rules apply to lending transactions between two identically owned passthrough entities. These final regulations affect taxpayers subject to the limitations on passive activity losses and credits.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 150.

OMB Number: 1545–1771.

Type of Review: Revision of a currently approved collection.

Title: Revenue Procedure 2009–41, Extension of Time to File Entity Classification Elections.

Abstract: This revenue procedure provides guidance under § 7701 of the Internal Revenue Code for an eligible entity that requests relief for a late classification election filed with the applicable IRS service center within 3 years and 75 days of the requested effective date of the eligible entity's classification election. The revenue procedure also provides guidance for those eligible entities that do not qualify for relief under this revenue procedure and that are required to request a letter ruling in order to request relief for a late entity classification. This revenue procedure supersedes Rev. Proc. 2002–59 by extending late entity classification relief to both initial classification elections and changes in classification elections along with extending the time for filing late entity classification elections to within 3 years and 75 days of the requested effective date of the eligible entity's classification election.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1.

OMB Number: 1545–1946.

Type of Review: Revision of a currently approved collection.

Title: T.D. 9315 (Final) Dual Consolidated Loss Regulations.

Abstract: This document contains final regulations under section 1503(d) of the Internal Revenue Code (Code) regarding dual consolidated losses. Section 1503(d) generally provides that a dual consolidated loss of a dual resident corporation cannot reduce the taxable income of any other member of the affiliated group unless, to the extent provided in regulations, the loss does not offset the income of any foreign corporation. Similar rules apply to losses of separate units of domestic corporations. These final regulations address various dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,765.

OMB Number: 1545–1947.

Type of Review: Extension without change of a currently approved collection.

Title: REG–105346–03 (NPRM)—Partnership Equity For Services.

Abstract: The proposed regulations provide that the transfer of a partnership interest in connection with the performance of services is subject to section 83 of the Internal Revenue Code (Code) and provide rules for coordinating section 83 with partnership taxation principles. The proposed regulations also provide that no gain or loss is recognized by a partnership on the transfer or vesting of an interest in the transferring partnership in connection with the performance of services for the transferring partnership.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 112,500.

OMB Number: 1545–2207.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2011–26, Additional First Year Depreciation Deduction.

Abstract: This revenue procedure provides guidance under § 2022(a) of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504 (September 27, 2010) (SBJA), and § 401(a) and (b) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312, 124 Stat. 3296 (December 17, 2010) (TRUIRJCA). Sections 2022(a) of the SBJA and 401(a) of the TRUIRJCA amend § 168(k)(2) of the Internal Revenue Code by extending the placed-in-service date for property to qualify for the 50-percent additional first year depreciation deduction. Section 401(b) of the TRUIRJCA amends § 168(k) by adding § 168(k)(5) that temporarily allows a 100-percent additional first year depreciation deduction for certain new property.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 125,000.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–24488 Filed 9–22–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL RESERVE SYSTEM

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Renewal of a Currently Approved Collection; Comment Request; Prohibition on Funding of Unlawful Internet Gambling

AGENCIES: Board of Governors of the Federal Reserve System (''Board'') and Departmental Offices, Department of the Treasury (''Treasury'') (collectively, the ''Agencies'').

ACTION: Joint notice and request for comment.

SUMMARY: The Agencies are soliciting comments concerning the currently approved recordkeeping requirements associated with a joint rule, which is being renewed without change, implementing the Unlawful Internet Gambling Enforcement Act of 2006 (the ''Act''). This notice is published jointly by the Agencies as part of their continuing effort to reduce paperwork and respondent burden. The public and other Federal agencies are invited to take this opportunity to comment on this information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Comments must be submitted on or before November 22, 2011.

ADDRESSES: Interested parties are invited to submit written comments to either or both of the Agencies. All comments, which should refer to the Office of Management and Budget (OMB) control numbers, will be shared between the Agencies. Direct all written comments as follows: *Board:* You may submit comments, identified by OMB control no. 7100–0317, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal E–Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or on paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.,) between 9 a.m. and 5 p.m. on weekdays.

Treasury: You may submit comments, identified by OMB control no. 1505–0204, by regular mail to Robert B. Dahl, Treasury Department Clearance Officer, U.S. Department of the Treasury, 1750 Pennsylvania Avenue, NW., Room 11020, Washington, DC 20220. In addition, comments may be sent by fax to (202) 927–6797, or by electronic mail to *Robert.Dahl@treasury.gov.* In general, the Treasury will make all comments available in their original format, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers, for public inspection and copying in the Treasury library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect comments by calling (202) 622–0990. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit comments that you wish to make publicly available.

Additionally, commenters should send a copy of their comments to the OMB desk officer for the Agencies by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street, NW., Paperwork Reduction Project (1505–0204 for Treasury or 7100–0317 for the Board), Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the collection may be obtained by contacting:

Board: Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

Treasury: Robert B. Dahl, Treasury Department Clearance Officer, (202) 622–3119, U.S. Department of the

Treasury, 1750 Pennsylvania Avenue, NW., Room 11020, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection

Comments are invited on:

a. Whether the proposed collection of information is necessary for the proper performance of the Agencies' functions; including whether the information has practical utility;

b. The accuracy of the Agencies' estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared between the Agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Proposal To Extend for Three Years, Without Revision, the Following Currently Approved Information Collection

Title: Prohibition on Funding of Unlawful Internet Gambling.

OMB Control Numbers

Board: 7100–0317.

Treasury: 1505–0204.

Abstract: On November 18, 2008, the Agencies published a joint notice of final rulemaking in the **Federal Register** (73 FR 69382) adopting a rule on a prohibition on the funding of unlawful Internet gambling pursuant to the Act. Identical sets of the final joint rule with identically numbered sections were adopted by the Board and the Treasury within their respective titles of the Code of Federal Regulations (12 CFR part 233 for the Board and 31 CFR part 132 for the Treasury). The compliance date for the joint rule was June 1, 2010 (74 FR 62687). The collection of information is set out in sections 5 and 6 of the joint rule.[1] Section 5 of the joint rule, as required by the Act, requires all non-exempt participants in designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling.[2] Section 6 of the joint rule provides non-exclusive examples of policies and procedures deemed by the Agencies to be reasonably designed to identify and block or otherwise prevent or prohibit transactions restricted by the Act.

Affected Public: Businesses or other for-profit and not-for-profit organizations.

Respondent Burden

For the purpose of estimating burden and accounting for it with OMB, the total number of depository institutions listed for each Agency includes the number of entities regulated by the Agency and half of the remaining depository institutions and third-party processors. Each Agency is also accounting for the burden for half of the card system operators and money transmitting business operators to which the Agencies estimate the final rule applies.

Board

Estimated number of recordkeepers: 3,300 depository institutions, 3,701 credit unions, 3 card system operators, 8 money transmitting business operators, and 3 new or de novo institutions.

Estimated average annual burden hours per recordkeeper: Ongoing annual burden of 8 hours per recordkeeper for depository institutions, credit unions, card system operators, and money transmitting business operators. One-time burden of 100 hours for new or de novo institutions.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: Ongoing burden, 56,096 hours and one-time burden, 300 hours.

Treasury

Estimated number of recordkeepers: 4,600 depository institutions, 3,701 credit unions, 3 card system operators, 8 money transmitting business operators, and 3 new or de novo institutions.

Estimated average annual burden hours per recordkeeper: Ongoing annual burden of 8 hours per recordkeeper for depository institutions, credit unions, card system operators, and money transmitting business operators. One-time burden of 100 hours for new or de novo institutions.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: Ongoing burden, 66,496 hours and one-time burden, 300 hours.

The Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

By the Board of Governors of the Federal Reserve System on September 19, 2011.

Jennifer J. Johnson,

Secretary of the Board.

Dated: September 15, 2011.

By the Department of the Treasury.

Robert B. Dahl,

Clearance Officer.

[FR Doc. 2011–24520 Filed 9–22–11; 8:45 am]

BILLING CODE 6210–01–P; 4810–25–P

[1] Section 802 of the Act requires the Agencies to prescribe joint regulations requiring each designated payment system, and all participants in such systems, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions. 31 U.S.C. 5364(a). Section 802 also requires the Agencies to include in the joint rule non-exclusive examples of reasonably designed policies and procedures. 31 U.S.C. 5364(b).

[2] 12 CFR 233.5 and 233.6; and 31 CFR 132.5 and 132.6.

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on October 5, 2011, in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of disabled Veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussions on academic affiliations, health care cost structure and value, women Veterans health care, the future of clinical education and simulation training.

No time will be allocated for receiving oral presentations from the public. However, members of the public may submit written statements for review by

the Committee to Ms. Juanita Leslie, Department of Veterans Affairs, Office of Administrative Operations (10B2), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *j.t.leslie@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Leslie at (202) 461–7019.

Dated: September 19, 2011.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2011–24410 Filed 9–22–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Executive Committee of the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will meet October 13–14, 2011, at the Charleston Marriott, 170 Lockwood Boulevard, Charleston, South Carolina. The sessions will begin at 8 a.m. each day and end at 4:30 p.m. on October 13, and at noon on October 14, 2011. The meeting is open to the public.

The Committee, comprised of 55 national voluntary organizations, advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The Executive Committee consists of 20 representatives from the NAC member organizations.

On October 13, agenda topics will include: NAC goals and objectives; review of minutes from the April 2011 NAC annual meeting; VAVS update on the Voluntary Service program's activities; Parke Board update; evaluations of the 2011 NAC annual meeting; and plans for 2012 NAC annual meeting (to include workshops and plenary sessions).

On October 14, agenda topics will include: Subcommittee reports; review of standard operating procedure revisions; 2013 NAC annual meeting plans; and any new business.

No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Ms. Laura Balun, Designated Federal Officer, Voluntary Service Office (10B2A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *Laura.Balun@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Balun at (202) 461–7300.

Dated: September 19, 2011.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2011–24415 Filed 9–22–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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No. 185 September 23, 2011

Part II

Federal Communications Commission

47 CFR Parts 0 and 8

Preserving the Open Internet; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 8

[GN Docket No. 09–191; WC Docket No. 07–52; FCC 10–201]

Preserving the Open Internet

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order establishes protections for broadband service to preserve and reinforce Internet freedom and openness. The Commission adopts three basic protections that are grounded in broadly accepted Internet norms, as well as our own prior decisions. First, transparency: fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and commercial terms of their broadband services. Second, no blocking: fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful Web sites, or block applications that compete with their voice or video telephony services. Third, no unreasonable discrimination: fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic. These rules, applied with the complementary principle of reasonable network management, ensure that the freedom and openness that have enabled the Internet to flourish as an engine for creativity and commerce will continue. This framework thus provides greater certainty and predictability to consumers, innovators, investors, and broadband providers, as well as the flexibility providers need to effectively manage their networks. The framework promotes a virtuous circle of innovation and investment in which new uses of the network—including new content, applications, services, and devices—lead to increased end-user demand for broadband, which drives network improvements that in turn lead to further innovative network uses.

DATES: *Effective Date:* These rules are effective November 20, 2011.

FOR FURTHER INFORMATION CONTACT: Matt Warner, (202) 418–2419 or e-mail, *matthew.warner@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in GN Docket No. 09–191, WC Docket No. 07–52, FCC 10–201, adopted December 21, 2010 and released December 23, 2010. The complete text of this document is available on the Commission's Web site at *http://www.fcc.gov*. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com*.

Synopsis of the Order

I. Preserving the Free and Open Internet

In this Order the Commission takes an important step to preserve the Internet as an open platform for innovation, investment, job creation, economic growth, competition, and free expression. To provide greater clarity and certainty regarding the continued freedom and openness of the Internet, we adopt three basic rules that are grounded in broadly accepted Internet norms, as well as our own prior decisions:

i. *Transparency.* Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services;

ii. *No blocking.* Fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful Web sites, or block applications that compete with their voice or video telephony services; and

iii. *No unreasonable discrimination.* Fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic.

We believe these rules, applied with the complementary principle of reasonable network management, will empower and protect consumers and innovators while helping ensure that the Internet continues to flourish, with robust private investment and rapid innovation at both the core and the edge of the network. This is consistent with the National Broadband Plan goal of broadband access that is ubiquitous and fast, promoting the global competitiveness of the United States.

In late 2009, we launched a public process to determine whether and what actions might be necessary to preserve the characteristics that have allowed the Internet to grow into an indispensable platform supporting our nation's economy and civic life, and to foster continued investment in the physical networks that enable the Internet. Since then, more than 100,000 commenters have provided written input. Commission staff held several public workshops and convened a Technological Advisory Process with experts from industry, academia, and consumer advocacy groups to collect their views regarding key technical issues related to Internet openness.

This process has made clear that the Internet has thrived because of its freedom and openness—the absence of any gatekeeper blocking lawful uses of the network or picking winners and losers online. Consumers and innovators do not have to seek permission before they use the Internet to launch new technologies, start businesses, connect with friends, or share their views. The Internet is a level playing field. Consumers can make their own choices about what applications and services to use and are free to decide what content they want to access, create, or share with others. This openness promotes competition. It also enables a self-reinforcing cycle of investment and innovation in which new uses of the network lead to increased adoption of broadband, which drives investment and improvements in the network itself, which in turn lead to further innovative uses of the network and further investment in content, applications, services, and devices. A core goal of this Order is to foster and accelerate this cycle of investment and innovation.

The record and our economic analysis demonstrate, however, that the openness of the Internet cannot be taken for granted, and that it faces real threats. Indeed, we have seen broadband providers endanger the Internet's openness by blocking or degrading content and applications without disclosing their practices to end users and edge providers, notwithstanding the Commission's adoption of open Internet principles in 2005.[1] In light of these considerations, as well as the limited choices most consumers have for broadband service, broadband

[1] In this Order we use ''broadband'' and ''broadband Internet access service'' interchangeably, and ''broadband provider'' and ''broadband Internet access provider'' interchangeably. ''End user'' refers to any individual or entity that uses a broadband Internet access service; we sometimes use ''subscriber'' or ''consumer'' to refer to those end users that subscribe to a particular broadband Internet access service. We use ''edge provider'' to refer to content, application, service, and device providers, because they generally operate at the edge rather than the core of the network. These terms are not mutually exclusive.

providers' financial interests in telephony and pay television services that may compete with online content and services, and the economic and civic benefits of maintaining an open and competitive platform for innovation and communication, the Commission has long recognized that certain basic standards for broadband provider conduct are necessary to ensure the Internet's continued openness. The record also establishes the widespread benefits of providing greater clarity in this area—clarity that the Internet's openness will continue, that there is a forum and procedure for resolving alleged open Internet violations, and that broadband providers may reasonably manage their networks and innovate with respect to network technologies and business models. We expect the costs of compliance with our prophylactic rules to be small, as they incorporate longstanding openness principles that are generally in line with current practices and with norms endorsed by many broadband providers. Conversely, the harms of open Internet violations may be substantial, costly, and in some cases potentially irreversible.

The rules we proposed in the *Open Internet NPRM* and those we adopt in this Order follow directly from the Commission's bipartisan *Internet Policy Statement,* adopted unanimously in 2005 and made temporarily enforceable for certain broadband providers in 2005 and 2007; openness protections the Commission established in 2007 for users of certain wireless spectrum; and a notice of inquiry in 2007 that asked, among other things, whether the Commission should add a principle of nondiscrimination to the *Internet Policy Statement*. Our rules build upon these actions, first and foremost by requiring broadband providers to be transparent in their network management practices, so that end users can make informed choices and innovators can develop, market, and maintain Internet-based offerings. The rules also prevent certain forms of blocking and discrimination with respect to content, applications, services, and devices that depend on or connect to the Internet.

An open, robust, and well-functioning Internet requires that broadband providers have the flexibility to reasonably manage their networks. Network management practices are reasonable if they are appropriate and tailored to achieving a legitimate network management purpose. Transparency and end-user control are touchstones of reasonableness.

We recognize that broadband providers may offer other services over the same last-mile connections used to provide broadband service. These ''specialized services'' can benefit end users and spur investment, but they may also present risks to the open Internet. We will closely monitor specialized services and their effects on broadband service to ensure, through all available mechanisms, that they supplement but do not supplant the open Internet.

Mobile broadband is at an earlier stage in its development than fixed broadband and is evolving rapidly. For that and other reasons discussed below, we conclude that it is appropriate at this time to take measured steps in this area. Accordingly, we require mobile broadband providers to comply with the transparency rule, which includes enforceable disclosure obligations regarding device and application certification and approval processes; we prohibit providers from blocking lawful Web sites; and we prohibit providers from blocking applications that compete with providers' voice and video telephony services. We will closely monitor the development of the mobile broadband market and will adjust the framework we adopt in this Order as appropriate.

These rules are within our jurisdiction over interstate and foreign communications by wire and radio. Further, they implement specific statutory mandates in the Communications Act (''Act'') and the Telecommunications Act of 1996 (''1996 Act''), including provisions that direct the Commission to promote Internet investment and to protect and promote voice, video, and audio communications services.

The framework we adopt aims to ensure the Internet remains an open platform—one characterized by free markets and free speech—that enables consumer choice, end-user control, competition through low barriers to entry, and the freedom to innovate without permission. The framework does so by protecting openness through high-level rules, while maintaining broadband providers' and the Commission's flexibility to adapt to changes in the market and in technology as the Internet continues to evolve.

II. The Need for Open Internet Protections

In the *Open Internet NPRM* (FCC 09–93 published at 74 FR 62638, November 30, 2009), we sought comment on the best means for preserving and promoting a free and open Internet. We noted the near-unanimous view that the Internet's openness and the transparency of its protocols have been critical to its unparalleled success. Citing evidence of broadband providers covertly blocking or degrading Internet traffic, and concern that broadband providers have the incentive and ability to expand those practices in the near future, we sought comment on prophylactic rules designed to preserve the Internet's prevailing norms of openness. Specifically, we sought comment on whether the Commission should codify the four principles stated in the *Internet Policy Statement,* plus proposed nondiscrimination and transparency rules, all subject to reasonable network management.[2]

Commenters agree that the open Internet is an important platform for innovation, investment, competition, and free expression, but disagree about whether there is a need for the Commission to take action to preserve its openness. Commenters who favor Commission action emphasize the risk of harmful conduct by broadband providers, and stress that failing to act could result in irreversible damage to the Internet. Those who favor inaction contend that the Internet generally is open today and is likely to remain so, and express concern that rules aimed at preventing harms may themselves impose significant costs. In this part, we assess these conflicting views. We conclude that the benefits of ensuring Internet openness through enforceable, high-level, prophylactic rules outweigh the costs. The harms that could result from threats to openness are significant and likely irreversible, while the costs of compliance with our rules should be small, in large part because the rules appear to be consistent with current industry practices. The rules are carefully calibrated to preserve the benefits of the open Internet and increase certainty for all Internet stakeholders, with minimal burden on broadband providers.

A. The Internet's Openness Promotes Innovation, Investment, Competition, Free Expression, and Other National Broadband Goals

Like electricity and the computer, the Internet is a ''general purpose technology'' that enables new methods of production that have a major impact on the entire economy. The Internet's founders intentionally built a network that is open, in the sense that it has no gatekeepers limiting innovation and

[2] The *Open Internet NPRM* recast the *Internet Policy Statement* principles as rules rather than consumer entitlements, but did not change the fact that protecting and empowering end users is a central purpose of open Internet protections.

communication through the network.[3] Accordingly, the Internet enables an end user to access the content and applications of her choice, without requiring permission from broadband providers. This architecture enables innovators to create and offer new applications and services without needing approval from any controlling entity, be it a network provider, equipment manufacturer, industry body, or government agency. End users benefit because the Internet's openness allows new technologies to be developed and distributed by a broad range of sources, not just by the companies that operate the network. For example, Sir Tim Berners-Lee was able to invent the World Wide Web nearly two decades after engineers developed the Internet's original protocols, without needing changes to those protocols or any approval from network operators. Startups and small businesses benefit because the Internet's openness enables anyone connected to the network to reach and do business with anyone else, allowing even the smallest and most remotely located businesses to access national and global markets, and contribute to the economy through e-commerce[4] and online advertising.[5] Because Internet openness enables widespread innovation and allows all end users and edge providers (rather than just the significantly smaller number of broadband providers) to create and determine the success or failure of content, applications, services, and devices, it maximizes commercial and non-commercial innovations that address key national challenges—including improvements in health care, education, and energy efficiency that benefit our economy and civic life.

The Internet's openness is critical to these outcomes, because it enables a virtuous circle of innovation in which new uses of the network—including new content, applications, services, and devices—lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses. Novel, improved, or lower-cost offerings introduced by content, application, service, and device providers spur end-user demand and encourage broadband providers to expand their networks and invest in new broadband technologies.[6] Streaming video and e-commerce applications, for instance, have led to major network improvements such as fiber to the premises, VDSL, and DOCSIS 3.0. These network improvements generate new opportunities for edge providers, spurring them to innovate further.[7] Each round of innovation increases the value of the Internet for broadband providers, edge providers, online businesses, and consumers. Continued operation of this virtuous circle, however, depends upon low barriers to innovation and entry by edge providers, which drive end-user demand. Restricting edge providers' ability to reach end users, and limiting end users' ability to choose which edge providers to patronize, would reduce the rate of innovation at the edge and, in turn, the likely rate of improvements to network infrastructure. Similarly, restricting the ability of broadband providers to put the network to innovative uses may reduce the rate of improvements to network infrastructure.

Openness also is essential to the Internet's role as a platform for speech and civic engagement. An informed electorate is critical to the health of a functioning democracy, and Congress has recognized that the Internet ''offer[s] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.'' Due to the lack of gatekeeper control, the Internet has become a major source of news and information, which forms the basis for informed civic discourse. Many Americans now turn to the Internet to obtain news,[8] and its openness makes it an unrivaled forum for free expression. Furthermore, local, State, and Federal government agencies are increasingly using the Internet to communicate with the public, including to provide information about and deliver essential services.

Television and radio broadcasters now provide news and other information online via their own Web sites, online aggregation Web sites such as Hulu, and social networking platforms. Local broadcasters are experimenting with new approaches to delivering original content, for example by creating neighborhood-focused Web sites; delivering news clips via online video programming aggregators, including AOL and Google's YouTube; and offering news from citizen journalists. In addition, broadcast networks license their full-length entertainment programs for downloading or streaming to edge providers such as Netflix and Apple.

[3] The Internet's openness is supported by an ''end-to-end'' network architecture that was formulated and debated in standard-setting organizations and foundational documents. *See, e.g.,* WCB Letter 12/10/10, Attach. at 17–29, Vinton G. Cerf & Robert E. Kahn, *A Protocol for Packet Network Interconnection,* COM–22 IEEE Transactions of Commc'ns Tech. 637–48 (1974); WCB Letter 12/10/10, Attach. at 30–39, J.H. Saltzer *et al., End to End Arguments in System Design,* Second Int'l Conf. on Distributed Computing Systems, 509–12 (1981); WCB Letter 12/10/10, Attach. at 49–55, B. Carpenter, Internet Engineering Task Force (''IETF''), *Architectural Principles of the Internet,* RFC 1958, 1–8 (June 1996), *http://www.ietf.org/rfc/rfc1958.txt;* Lawrence Roberts, *Multiple Computer Networks and Intercomputer Communication,* ACM Symposium on Operation System Principles (1967). Under the end-to-end principle, devices in the middle of the network are not optimized for the handling of any particular application, while devices at network endpoints perform the functions necessary to support networked applications and services. *See generally* WCB Letter 12/10/10, Attach. at 40–48, J. Kempf & R. Austein, IETF, *The Rise of the Middle and the Future of End-to-End: Reflections on the Evolution of the Internet Architecture,* RFC 3724, 1–14 (March 2004), *ftp://ftp.rfc-editor.org/in-notes/rfc3724.txt.*

[4] Business-to-consumer e-commerce was estimated to total $135 billion in 2009. *See* WCB Letter 12/10/10, Attach. at 81–180, Robert D. Atkinson *et al., The Internet Economy 25 Years After.com,* Info. Tech. & Innovation Found., at 24 (March 2010), *available at http://www.itif.org/files/2010-25-years.pdf.*

[5] The advertising-supported Internet sustains about $300 billion of U.S. GDP. *See* Google Comments at 7.

[6] We note that broadband providers can also be edge providers.

[7] For example, the increasing availability of multimedia applications on the World Wide Web during the 1990s was one factor that helped create demand for residential broadband services. Internet service providers responded by adopting new network infrastructure, modem technologies, and network protocols, and marketed broadband to residential customers. *See, e.g.,* WCB Letter 12/13/10, Attach. at 250–72, Chetan Sharma, *Managing Growth and Profits in the Yottabyte Era* (2009), *http://www.chetansharma.com/yottabyteera.htm* (Yottabyte). By the late 1990s, a residential end user could download content at speeds not achievable even on the Internet backbone during the 1980s. *See, e.g.,* WCB Letter 12/13/10, Attach. at 226–32, Susan Harris & Elise Gerich, *The NSFNET Backbone Service: Chronicling the End of an Era,* 10 ConneXions (April 1996), *available at http://www.merit.edu/networkresearch/projecthistory/nsfnet/nsfnet_article.php.* Higher speeds and broadband's ''always on'' capability, in turn, stimulated more innovation in applications, from gaming to video streaming, which in turn encouraged broadband providers to increase network speeds. WCB Letter 12/13/10, Attach. at 233–34, Link Hoewing, *Twitter, Broadband and Innovation,* PolicyBlog, Dec. 4, 2010, *policyblog.verizon.com/BlogPost/626/TwitterBroadbandandInnovation.aspx.*

[8] *See* WCB Letter 12/10/10, Attach. at 133–41, Pew Research Ctr. for People and the Press, Americans Spend More Time Following the News; Ideological News Sources: Who Watches and Why 17, 22 (Sept. 12, 2010), *people-press.org/report/652/* (stating that ''44% of Americans say they got news through one or more Internet or mobile digital source yesterday''); WCB Letter 12/10/10, Attach. at 131–32, TVB Local Media Marketing Solutions, Local News: Local TV Stations are the Top Daily News Source, *http://www.tvb.org/planning_buying/120562* (estimating that 61% of Americans get news from the Internet) (''*TVB*''). However, according to the Pew Project for Excellence in Journalism, the majority of news that people access online originates from legacy media. *See* Pew Project for Excellence in Journalism, The State of the News Media: An Annual Report on American Journalism (2010), *http://www.stateofthemedia.org/2010/overview_key_findings.php* (''Of news sites with half a million visitors a month (or the top 199 news sites once consulting, government and information data bases are removed), 67% are from legacy media, most of them (48%) newspapers.'').

Because these sites are becoming increasingly popular with the public, online distribution has a strategic value for broadcasters, and is likely to provide an increasingly important source of funding for broadcast news and entertainment programming.

Unimpeded access to Internet distribution likewise has allowed new video content creators to create and disseminate programs without first securing distribution from broadcasters and multichannel video programming distributors (MVPDs) such as cable and satellite television companies. Online viewing of video programming content is growing rapidly.[9]

In the *Open Internet NPRM,* the Commission sought comment on possible implications that the proposed rules might have ''on efforts to close the digital divide and encourage robust broadband adoption and participation in the Internet community by minorities and other socially and economically disadvantaged groups.'' As we noted in the *Open Internet NPRM,* according to a 2009 study, broadband adoption varies significantly across demographic groups.[10] We expect that open Internet protections will help close the digital divide by maintaining relatively low barriers to entry for underrepresented groups and allowing for the development of diverse content, applications, and services.[11]

For all of these reasons, there is little dispute in this proceeding that the Internet should continue as an open platform. Accordingly, we consider below whether we can be confident that the openness of the Internet will be self-perpetuating, or whether there are threats to openness that the Commission can effectively mitigate.

B. Broadband Providers Have the Incentive and Ability to Limit Internet Openness

For purposes of our analysis, we consider three types of Internet activities: providing broadband Internet access service; providing content, applications, services, and devices accessed over or connected to broadband Internet access service (''edge'' products and services); and subscribing to a broadband Internet access service that allows access to edge products and services. These activities are not mutually exclusive. For example, individuals who generate and share content such as personal blogs or Facebook pages are both end users and edge providers, and a single firm could both provide broadband Internet access service and be an edge provider, as with a broadband provider that offers online video content. Nevertheless, this basic taxonomy provides a useful model for evaluating the risk and magnitude of harms from loss of openness.

The record in this proceeding reveals that broadband providers potentially face at least three types of incentives to reduce the current openness of the Internet. *First,* broadband providers may have economic incentives to block or otherwise disadvantage specific edge providers or classes of edge providers, for example by controlling the transmission of network traffic over a broadband connection, including the price and quality of access to end users. A broadband provider might use this power to benefit its own or affiliated offerings at the expense of unaffiliated offerings.

Today, broadband providers have incentives to interfere with the operation of third-party Internet-based services that compete with the providers' revenue-generating telephony and/or pay-television services. This situation contrasts with the first decade of the public Internet, when dial-up was the primary form of consumer Internet access. Independent companies such as America Online, CompuServe, and Prodigy provided access to the Internet over telephone companies' phone lines. As broadband has replaced dial-up, however, telephone and cable companies have become the major providers of Internet access service. Online content, applications, and services available from edge providers over broadband increasingly offer actual or potential competitive alternatives to broadband providers' own voice and video services, which generate substantial profits. Interconnected Voice-over-Internet-Protocol (VoIP) services, which include some over-the-top VoIP services,[12] ''are increasingly being used as a substitute for traditional telephone service,'' [13] and over-the-top

[9] *See* Google Comments at 28; Motorola Comments at 5; MPAA Comments at 5–6; DISH Reply at 4–5; WCB Letter 12/10/10, Attach. at 22–23, *Online Video Goes Mainstream,* eMarketer, Apr. 28, 2010, *http://www.emarketer.com/Article.aspx?R=1007664* (estimating that 29% of Internet users younger than 25 say they watch all or most of their TV online, that as of April 2010 67% of U.S. Internet users watch online video each month, and that this figure will increase to 77% by 2014); WCB Letter 12/10/10, Attach. at 20–21, Chris Nuttall, *Web TVs bigger for manufacturers than 3D,* Financial Times, Aug. 29, 2010, *http://www.ft.com/cms/s/2/0b34043a-9fe3-11df-8cc5-00144feabdc0.html* (stating that 28 million Internet-enabled TV sets are expected to be sold in 2010, an increase of 125% from 2009); WCB Letter 12/13/10, Attach. at 291–92, Sandvine, News and Events: Press Releases, *http://www.sandvine.com/news/pr_detail.asp?ID=288* (estimating that Netflix represents more than 20% of peak downstream Internet traffic). Cisco expects online viewing to exert significant influence on future demand for broadband capacity, ranking as the top source of Internet traffic by the end of 2010 and accounting for 91% of global Internet traffic by 2014. WCB Letter 12/10/10, Attach. at 40–42, Press Release, Cisco, Annual Cisco Visual Networking Index Forecast Projects Global IP Traffic To Increase More than Fourfold by 2014 (June 10, 2010), *http://www.cisco.com/web/MT/news/10/news_100610.html.*

[10] *See* Pew Internet & Am. Life Project, Home Broadband Adoption (June 2009). Approximately 14 to 24 million Americans remain without broadband access capable of meeting the requirements set forth in Section 706 of the Telecommunications Act of 1996, as amended. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act et al.,* Sixth Broadband Deployment Report, 25 FCC Rcd 9556, 9557, para. 1 (2010) (*Sixth Broadband Deployment Report*).

[11] For example, Jonathan Moore founded Rowdy Orbit IPTV, an online platform featuring original programming for minority audiences, because he was frustrated by the lack of representation of people of color in traditional media. Dec. 15, 2009 Workshop Tr. at 39–40, *video available at http://www.openinternet.gov/workshops/speech-democratic-engagement-and-the-open-internet.html.* The Internet's openness—and the low costs of online entry—enables businesses like Rowdy Orbit to launch without having to gain approval from traditional media gatekeepers. *Id.* We will closely monitor the effects of the open Internet rules we adopt in this Order on the digital divide and on minority and disadvantaged consumers. *See generally* ColorOfChange Comments; Dec. 15, 2009 Workshop Tr. at 52–60 (remarks of Ruth Livier, YLSE); 100 Black Men of America *et al.* Comments at 1–2; Free Press Comments at 134–36; Center for Media Justice *et al.* Comments at 7–9.

[12] The Commission's rules define interconnected VoIP as ''a service that: (1) Enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.'' 47 CFR 9.3. Over-the-top VoIP services require the end user to obtain broadband transmission from a third-party provider, and providers of over-the-top VoIP can vary in terms of the extent to which they rely on their own facilities. *See SBC Commc'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* WC Docket No, 05–65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18337–38, para. 86 (2005).

[13] *Tel. Number Requirements for IP-Enabled Servs. Providers,* Report and Order, Declaratory Ruling, Order on Remand, and NPRM, 22 FCC Rcd 19531, 19547, para. 28 (2007); *see also* Vonage Comments at 3–4. In merger reviews and forbearance petitions, the Commission has found the record ''inconclusive regarding the extent to which various over-the-top VoIP services should be included in the relevant product market for [mass market] local services.'' *See, e.g., Verizon Commc'ns Inc. and MCI, Inc. Application for Approval of Transfer of Control,* Memorandum Opinion and Order, 20 FCC Rcd 18433, 18480, para. 89 (2005); *see also Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. sec. 160(c) in the Phoenix, Arizona Metropolitan Statistical Area,* Memorandum Opinion and Order, 25 FCC Rcd 8622, 8650, para. 54 (2010) (*Qwest Phoenix Order*). In contrast to those proceedings, we are not performing a market power analysis in this

Continued

VoIP services represent a significant share of voice-calling minutes, especially for international calls. Online video is rapidly growing in popularity, and MVPDs have responded to this trend by enabling their video subscribers to use the Internet to view their programming on personal computers and other Internet-enabled devices. Online video aggregators such as Netflix, Hulu, YouTube, and iTunes that are unaffiliated with traditional MVPDs continue to proliferate and innovate, offering movies and television programs (including broadcast programming) on demand, and earning revenues from advertising and/or subscriptions. Several MVPDs have stated publicly that they view these services as a potential competitive threat to their core video subscription service. Thus, online edge services appear likely to continue gaining subscribers and market significance,[14] which will put additional competitive pressure on broadband providers' own services. By interfering with the transmission of third parties' Internet-based services or raising the cost of online delivery for particular edge providers, telephone and cable companies can make those services less attractive to subscribers in comparison to their own offerings.

In addition, a broadband provider may act to benefit edge providers that have paid it to exclude rivals (for example, if one online video site were to contract with a broadband provider to deny a rival video site access to the broadband provider's subscribers). End users would be harmed by the inability to access desired content, and this conduct could lead to reduced innovation and fewer new services.[15] Consistent with these concerns, delivery networks that are vertically integrated with content providers, including some MVPDs, have incentives to favor their own affiliated content.[16] If broadband providers had historically favored their own affiliated businesses or those incumbent firms that paid for advantageous access to end users, some innovative edge providers that have today become major Internet businesses might not have been able to survive.

Second, broadband providers may have incentives to increase revenues by charging edge providers, who already pay for their own connections to the Internet, for access or prioritized access to end users. Although broadband providers have not historically imposed such fees, they have argued they should be permitted to do so. A broadband provider could force edge providers to pay inefficiently high fees because that broadband provider is typically an edge provider's only option for reaching a particular end user.[17] Thus broadband providers have the ability to act as gatekeepers.[18]

Broadband providers would be expected to set inefficiently high fees to edge providers because they receive the benefits of those fees but are unlikely to fully account for the detrimental impact on edge providers' ability and incentive to innovate and invest, including the possibility that some edge providers might exit or decline to enter the market. The unaccounted-for harms to innovation are negative externalities,[19] and are likely to be particularly large because of the rapid pace of Internet innovation, and wide-ranging because of the role of the Internet as a general purpose technology. Moreover, fees for access or prioritized access could trigger an ''arms race'' within a given edge market segment. If one edge provider pays for access or prioritized access to end users, subscribers may tend to favor that provider's services, and competing edge providers may feel that they must respond by paying, too.

Fees for access or prioritization to end users could reduce the potential profit

proceeding, so we need not and do not here determine with specificity whether, and to what extent, particular over-the-top VoIP services constrain particular practices and/or rates of services governed by Section 201. *Cf. Qwest Phoenix Order,* 25 FCC Rcd at 8647–48, paras. 46–47 (discussing the general approach to product market definition); *id.* at 8651–52, paras. 55–56 (discussing the need for evidence that one service constrains the price of another service to include them in the same product market for purposes of a market power analysis).

[14] *See, e.g.,* WCB Letter 12/10/10, Attach. at 5763, Ryan Fleming, *New Report Shows More People Dropping Cable TV for Web Broadcasts,* Digital Trends, Apr. 16, 2010, *available at http://www.digitaltrends.com/computing/new-report-shows-that-more-and-more-people-are-dropping-cable-tv-in-favor-of-web-broadcasts.* Congress recently recognized these developments by expanding disabilities access requirements to include advanced communications services. *See* Twenty-First Century Communications and Video Accessibility Act, Public Law 111–260; *see also* 156 CONG. REC. 6005 (daily ed. July 26, 2010) (remarks of Rep. Waxman) (this legislation before us * * * ensur[es] that Americans with disabilities can access the latest communications technology.); *id.* at 6004 (remarks of Rep. Markey) (''[T]he bill we are considering today significantly increases accessibility for Americans with disabilities to the indispensable telecommunications * * * tools of the 21st century.''); Letter from Rick Chessen, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09–191 at 2 n.6 (filed Dec. 10, 2010).

[15] *See generally* WCB Letter 12/10/10, Attach. at 23–27, Steven C. Salop & David Scheffman, *Raising Rivals' Cost,* 73 Am. Econ. Rev. 267–71 (1983); WCB Letter 12/10/10, Attach. at 1–23, Steven C. Salop & Thomas Krattenmaker, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price,* 96 Yale L.J. 214 (1986). *See also* Andrew I. Gavil *et al., Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy* 1153–92 (2d ed. 2008) (describing how policies fostering competition spur innovation). To similar effect, a broadband provider may raise access fees to disfavored edge providers, reducing their ability to profit by raising their costs and limiting their ability to compete with favored edge providers.

[16] *See* Google Comments at 30–31; Netflix Comments at 7 n.10; Vonage Reply at 4; WCB Letter 12/10/10, Attach. at 28–78, Austan Goolsbee, *Vertical Integration and the Market for Broadcast and Cable Television Programming,* Paper for the Federal Communications Commission 31–32 (Sept. 5, 2007) (Goolsbee Study) (finding that MVPDs excluded networks that were rivals of affiliated channels for anticompetitive reasons). *Cf.* WCB Letter 12/10/10, Attach. at 85–87, David Waterman & Andrew Weiss, Vertical Integration in Cable Television 142–143 (1997) (MVPD exclusion of unaffiliated content during an earlier time period); *see also* H.R. Rep. 102–628 (2d Sess.) at 41 (1992) (''The Committee received testimony that vertically integrated companies reduce diversity in programming by threatening the viability of rival cable programming services.''). In addition to the examples of actual misconduct that we provide, the Goolsbee Study provides empirical evidence that cable providers have acted in the past on anticompetitive incentives to foreclose rivals, supporting our concern that these and other broadband providers would act on analogous incentives in the future. We thus disagree that we rely on ''speculative harms alone'' or have failed to adduce ''empirical evidence.'' Baker Statement at * 1, * 4 (citing AT&T Reply Exh. 2 at 45 (J. Gregory Sidak & David J. Teece, *Innovation Spillovers and the ''Dirt Road'' Fallacy: The Intellectual Bankruptcy of Banning Optional Transactions for Enhanced Delivery over the Internet,* 6 J. Competition L. & Econ. 521, 571–72 (2010)). To the contrary, the empirical evidence and the misconduct that we describe below validate the economic theories that inform our decision in this Order. Moreover, as we explain below, by comparison to the benefits of the prophylactic measures we adopt, the costs associated with these open Internet rules are likely small.

[17] Some end users can be reached through more than one broadband connection, sometimes via the same device (*e.g.,* a smartphone that has Wi-Fi and cellular connectivity). Even so, the end user, not the edge provider, chooses which broadband provider the edge provider must rely on to reach the end user.

[18] Also known as a ''terminating monopolist.'' *See, e.g.,* CCIA Comments at 7; Skype Comments at 10–11; Vonage Comments at 9–10; Google Reply at 8–14. A broadband provider can act as a gatekeeper even if some edge providers would have bargaining power in negotiations with broadband providers over access or prioritization fees.

[19] A broadband provider may hesitate to impose costs on its own subscribers, but it will typically not take into account the effect that reduced edge provider investment and innovation has on the attractiveness of the Internet to end users that rely on other broadband providers—and will therefore ignore a significant fraction of the cost of foregone innovation. *See, e.g.,* OIC Comments at 20–24. If the total number of broadband subscribers shrinks, moreover, the social costs unaccounted for by the broadband provider could also include the lost ability of the remaining end users to connect with the subscribers that departed (foregone direct network effects) and a smaller potential audience for edge providers. *See, e.g., id.* at 23. Broadband providers are also unlikely to fully account for the open Internet's power to enhance civic discourse through news and information, or for its ability to enable innovations that help address key national challenges such as education, public safety, energy efficiency, and health care. *See* ARL *et al.* Comments at 3; Google Reply at 39; American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

that an edge provider would expect to earn from developing new offerings, and thereby reduce edge providers' incentives to invest and innovate.[20] In the rapidly innovating edge sector, moreover, many new entrants are new or small ''garage entrepreneurs,'' not large and established firms. These emerging providers are particularly sensitive to barriers to innovation and entry, and may have difficulty obtaining financing if their offerings are subject to being blocked or disadvantaged by one or more of the major broadband providers. In addition, if edge providers need to negotiate access or prioritized access fees with broadband providers,[21] the resulting transaction costs could further raise the costs of introducing new products and might chill entry and expansion.[22]

Some commenters argue that an end user's ability to switch broadband providers eliminates these problems. But many end users may have limited choice among broadband providers, as discussed below. Moreover, those that can switch broadband providers may not benefit from switching if rival broadband providers charge edge providers similarly for access and priority transmission and prioritize each edge provider's service similarly. Further, end users may not know whether charges or service levels their broadband provider is imposing on edge providers vary from those of alternative broadband providers, and even if they do have this information may find it costly to switch. For these reasons, a dissatisfied end user, observing that some edge provider services are subject to low transmission quality, might not switch broadband providers (though they may switch to a rival edge provider in the hope of improving quality).

Some commenters contend that, in the absence of open Internet rules, broadband providers that earn substantial additional revenue by assessing access or prioritization charges on edge providers could avoid increasing or could reduce the rates they charge broadband subscribers, which might increase the number of subscribers to the broadband network. Although this scenario is possible,[23] no broadband provider has stated in this proceeding that it actually would use any revenue from edge provider charges to offset subscriber charges. In addition, these commenters fail to account for the likely detrimental effects of access and prioritization charges on the virtuous circle of innovation described above. Less content and fewer innovative offerings make the Internet less attractive for end users than would otherwise be the case. Consequently, we are unable to conclude that the possibility of reduced subscriber charges outweighs the risks of harm described herein.[24]

Third, if broadband providers can profitably charge edge providers for prioritized access to end users, they will have an incentive to degrade or decline to increase the quality of the service they provide to non-prioritized traffic. This would increase the gap in quality (such as latency in transmission) between prioritized access and non-prioritized access, induce more edge providers to pay for prioritized access, and allow broadband providers to charge higher prices for prioritized access. Even more damaging, broadband providers might withhold or decline to expand capacity in order to ''squeeze'' non-prioritized traffic, a strategy that would increase the likelihood of network congestion and confront edge providers with a choice between accepting low-quality transmission or paying fees for prioritized access to end users.

Moreover, if broadband providers could block specific content, applications, services, or devices, end users and edge providers would lose the control they currently have over whether other end users and edge providers can communicate with them through the Internet. Content, application, service, and device providers (and their investors) could no longer assume that the market for their offerings included all U.S. end users. And broadband providers might choose to implement undocumented practices for traffic differentiation that undermine the ability of developers to create generally usable applications without having to design to particular broadband providers' unique practices or business arrangements.[25]

All of the above concerns are exacerbated by broadband providers' ability to make fine-grained distinctions in their handling of network traffic as a result of increasingly sophisticated network management tools. Such tools may be used for beneficial purposes, but they also increase broadband providers' ability to act on incentives to engage in

[20] *See, e.g.,* ALA Comments at 3–4; ColorOfChange Comments at 3; Free Press Comments at 69; Google Comments at 34; Netflix Comments at 4; OIC Comments at 29–30; DISH Reply at 10. Such fees could also reduce an edge provider's incentive to invest in existing offerings, assuming the fees would be expected to increase to the extent improvements increased usage of the edge provider's offerings.

[21] Negotiations impose direct expenses and delay. *See* Google Comments at 34. There may also be significant costs associated with the possibility that the negotiating parties would reach an impasse. *See* ALA Comments at 2 (''The cable TV industry offers a telling example of the 'pay to play' environment where some cable companies do not offer their customers access to certain content because the company has not successfully negotiated financial compensation with the content provider.''). Edge providers may also bear costs arising from their need to monitor the extent to which they actually receive prioritized delivery.

[22] *See, e.g.,* Google Comments at 34–35; Shane Greenstein Notice of Ex Parte, GN Docket No. 09–191, *Transaction Cost, Transparency, and Innovation for the Internet* at 19, *available at http://www.openinternet.gov/workshops/innovation-investment-and-the-open-internet.html;* van Schewick Jan. 19, 2010 *Ex Parte* Letter, Opening Statement at 7 (arguing that the low costs of innovation not only make many more applications worth pursuing, but also allow a large and diverse group of people to become innovators, which in turn increases the overall amount and quality of innovation). There are approximately 1,500 broadband providers in the United States. *See* Wireline Competition Bureau, FCC, Internet Access Services: Status as of December 31, 2009 at 7, tbl. 13 (Dec. 2010) (FCC Internet Status Report), *available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1208/DOC-303405A1.pdf.* The innovative process frequently generates a large number of attempts, only a few of which turn out to be highly successful. Given the likelihood of failure, and that financing is not always readily available to support research and development, the innovation process in many sectors of the Internet's edge is likely to be highly sensitive to the upfront costs of developing and introducing new products. PIC Comments at 50 (''[I]t is unlikely that new entrants will have the ability (both financially and with regard to information) to negotiate with every ISP that serves the markets that they are interested in.'').

[23] Economics literature recognizes that access charges could be harmful under some circumstances and beneficial under others. *See, e.g.,* WCB Letter 12/10/10, Attach. at 1–62, E. Glen Weyl, *A Price Theory of Multi-Sided Platforms,* 100 Am. Econ. Rev. 1642, 1642–72 (2010) (the effects of allowing broadband providers to charge terminating rates to content providers are ambiguous); *see also* WCB Letter 12/10/10, Attach. at 180–215, John Musacchio *et al., A Two-Sided Market Analysis of Provider Investment Incentives with an Application to the Net-Neutrality Issue,* 8 Rev. of Network Econ. 22, 22–39 (2009) (noting that there are conditions under which ''a zero termination price is socially beneficial''). Moreover, the economic literature on two-sided markets is at an early stage of development. AT&T Comments, Exh. 3, Schwartz Decl. at 16; Jeffrey A. Eisenach (Eisenach) Reply at 11–12; *cf., e.g.,* WCB Letter 12/10/10, Attach. at 156–79, Mark Armstrong, *Competition in Two-Sided Markets,* 37 Rand J. of Econ. 668 (2006); WCB Letter 12/10/10, Attach. at 216–302, Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Markets,* 1 J. Eur. Econ. Ass'n 990 (2003).

[24] Indeed, demand for broadband Internet access service might decline even if subscriber fees fell, if the conduct of broadband providers discouraged demand by blocking end user access to preferred edge providers, slowing non-prioritized transmission, and breaking the virtuous circle of innovation.

[25] *See* OIC Comments at 24; Free Press Comments at 45. The transparency and reasonable network management guidelines we adopt in this Order, in particular, should reduce the likelihood of such fragmentation of the Internet.

network practices that would erode Internet openness.[26]

Although these threats to Internet-enabled innovation, growth, and competition do not depend upon broadband providers having market power with respect to end users,[27] most would be exacerbated by such market power. A broadband provider's incentive to favor affiliated content or the content of unaffiliated firms that pay for it to do so, its incentive to block or degrade traffic or charge edge providers for access to end users, and its incentive to squeeze non-prioritized transmission will all be greater if end users are less able to respond by switching to rival broadband providers. The risk of market power is highest in markets with few competitors, and most residential end users today have only one or two choices for wireline broadband Internet access service. As of December 2009, nearly 70 percent of households lived in census tracts where only one or two wireline or fixed wireless firms provided advertised download speeds of at least 3 Mbps and upload speeds of at least 768 Kbps[28]—the closest observable benchmark to the minimum download speed of 4 Mbps and upload speed of 1 Mbps that the Commission has used to assess broadband deployment. About 20 percent of households are in census tracts with only one provider advertising at least 3 Mbps down and 768 Kbps up. For Internet service with advertised download speeds of at least 10 Mbps down and upload speeds of at least 1.5 Mbps up, nearly 60 percent of households lived in census tracts served by only one wireline or fixed wireless broadband provider, while nearly 80 percent lived in census tracts served by no more than two wireline or fixed wireless broadband providers.

Including mobile broadband providers does not appreciably change these numbers.[29] The roll-out of next generation mobile services is at an early stage, and the future of competition in residential broadband is unclear.[30] The record does not enable us to make a predictive judgment that the future will be more competitive than the past. Although wireless providers are increasingly offering faster broadband services, we do not know, for example, how end users will value the trade-offs between the benefits of wireless service (*e.g.,* mobility) and the benefits of fixed wireline service (*e.g.,* higher download and upload speeds).[31] We note that the two largest mobile broadband providers also offer wireline or fixed service;[32] this could dampen their incentive to compete aggressively with wireline (or fixed) services.[33]

In addition, customers may incur significant costs in switching broadband providers[34] because of early termination fees;[35] the inconvenience of ordering, installation, and set-up, and associated deposits or fees; possible difficulty returning the earlier broadband provider's equipment and the cost of replacing incompatible customer-owned equipment; the risk of temporarily losing service; the risk of problems learning how to use the new service; and the possible loss of a provider-specific e-mail address or Web site.

C. Broadband Providers Have Acted To Limit Openness

These dangers to Internet openness are not speculative or merely theoretical. Conduct of this type has already come before the Commission in enforcement proceedings. As early as 2005, a broadband provider that was a subsidiary of a telephone company paid $15,000 to settle a Commission investigation into whether it had blocked Internet ports used for competitive VoIP applications. In 2008, the Commission found that Comcast disrupted certain peer-to-peer (P2P) uploads of its subscribers, without a reasonable network management justification and without disclosing its actions. Comparable practices have been observed in the provision of mobile broadband services. After entering into a contract with a company to handle online payment services, a mobile wireless provider allegedly blocked customers' attempts to use competing services to make purchases using their mobile phones. A nationwide mobile provider restricted the types of lawful applications that could be accessed over its 3G mobile wireless network.

[26] *See* CCIA/CEA Comments at 4; Free Press Comments at 29–30, 143–46; Google Comments at 32–34; Netflix Comments at 3; OIC Comments at 14, 79–82; DISH Reply at 8–9; IPI Reply at 9; Vonage Reply at 5. For examples of network management tools, see, for example, WCB Letter 12/10/10, Attach. at 1–8, Allot Service Gateway, Pushing the DPI Envelope: An Introduction, at 2 (June 2007), *available at http://www.sysob.com/download/AllotServiceGateway.pdf* (''Reduce the performance of applications with negative influence on revenues (*e.g.* competitive VoIP services).''); WCB Letter 12/13/10, Attach. at 289–90, Procera Networks, PLR, *http://www.proceranetworks.com/customproperties/tag/Products-PLR.html;* WCB Letter 12/13/10, Attach. at 283–88, Cisco, *http//:www.cisco.com/en/US/prod/collateral/ps7045/ps6129/ps6133/ps6150/prod_brochure0900aecd8025258e.pdf* (marketing the ability of equipment to identify VoIP, video, and other traffic types). Vendors market their offerings as enabling broadband providers to ''make only modest incremental infrastructure investments and to control operating costs.'' WCB Letter 12/13/10, Attach. at 283, Cisco.

[27] Because broadband providers have the ability to act as gatekeepers even in the absence of market power with respect to end users, we need not conduct a market power analysis.

[28] *See* FCC Internet Status Report at 7, fig. 3(a). A broadband provider's presence in a census tract does not mean it offers service to all potential customers within that tract. And the data reflect subscriptions, not network capability.

[29] In December 2009, nearly 60% of households lived in census tracts where no more than two broadband providers offered service with 3 Mbps down and 768 Kbps up, while no mobile broadband providers offered service with 10 Mbps down and 1.5 Mbps up. *Id.* at 8, fig. 3(b). Mobile broadband providers generally have offered bandwidths lower than those available from fixed providers. *See* Yottabyte at 13–14.

[30] *See* National Broadband Plan at 40–42. A number of commenters discuss impediments to increased competition. *See, e.g.,* Ad Hoc Comments at 9; Google Comments, at 18–22; IFTA Comments at 10–11; *see also* WCB Letter 12/10/10, Attach. at 9–16, Thomas Monath *et al., Economics of Fixed Broadband Network Strategies,* 41 IEEE Comm. Mag. 132, 132–39 (Sept. 2003).

[31] *See* Ad Hoc Comments at 9; Google Comments at 21; Vonage Comments at 8; IPI Reply at 14; WCB Letter 12/10/10, Attach. at 56–65, Vikram Chandrasekhar & Jeffrey G. Andrews, *Femtocell Networks: A Survey,* 46 IEEE Comm. Mag., Sept. 2008, 59, at 59–60 (explaining mobile spectrum alone cannot compete with wireless connections to fixed networks). We also do not know how offers by a single wireless broadband provider for both fixed and mobile broadband services will perform in the marketplace.

[32] *See* OIC Comments at 71–72. Large cable companies that provide fixed broadband also have substantial ownership interests in Clear, the 4G wireless venture in which Sprint has a majority ownership interest.

[33] OIC Comments at 71–72; Skype Comments at 10. In cellular telephony, multimarket conduct has been found to dampen competition. *See* WCB Letter 12/10/10, Attach. at 1–24, P.M. Parker and L.H. Röller, *Collusive conduct in duopolies: Multimarket contact and cross ownership in the mobile telephone industry,* 28 Rand J. Of Econ. 304, 304–322 (Summer 1997); WCB Letter 12/10/10, Attach. at 25–58, Meghan R. Busse, *Multimarket contact and price coordination in the cellular telephone industry,* 9 J. of Econ. & Mgmt. Strategy 287, 287–320 (Fall 2000). Moreover, some fixed broadband providers also provide necessary inputs to some mobile providers' offerings, such as backhaul transport to wireline facilities.

[34] ARL *et al.* Comments at 5; Google Comments at 21–22; Netflix Comments at 5; New Jersey Rate Counsel (NJRC) Comments at 17; OIC Comments at 40, 73; PIC Comments at 23; Skype Comments at 12; OIC Reply at 20–21; Paul Misener (Amazon.com) Comments at 2; *see also* WCB Letter 12/10/10, Attach. at 59–76, Patrick Xavier & Dimitri Ypsilanti, *Switching Costs and Consumer Behavior: Implications for Telecommunications Regulation,* 10(4) Info 2008, 13, 13–29 (2008). Churn is a function of many factors. *See, e.g.,* WCB Letter 12/10/10, Attach. at 1–53, 97–153, AT&T Comments, WT Docket No. 10–133, at 51 (Aug. 2, 2010). The evidence in the record, *e.g.,* AT&T Comments at 83, is not probative as to the extent of competition among broadband providers because it does not appropriately isolate a connection between churn levels and the extent of competition.

[35] Google Comments at 21–22. Of broadband end users with a choice of broadband providers, 32% said paying termination fees to their current provider was a major reason why they have not switched service. FCC, Broadband Decision: What Drives Consumers to Switch—Or Stick With—Their Broadband Internet Provider 8 (Dec. 2010) (FCC Internet Survey), *available at hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-303264A1.pdf.*

There have been additional allegations of blocking, slowing, or degrading P2P traffic. We do not determine in this Order whether any of these practices violated open Internet principles, but we note that they have raised concerns among edge providers and end users, particularly regarding lack of transparency. For example, in May 2008 a major cable broadband provider acknowledged that it had managed the traffic of P2P services. In July 2009, another cable broadband provider entered into a class action settlement agreement stating that it had ''ceased P2P Network Management Practices,'' but allowing the provider to resume throttling P2P traffic.[36] There is evidence that other broadband providers have engaged in similar degradation.[37] In addition, broadband providers' terms of service commonly reserve to the provider sweeping rights to block, degrade, or favor traffic. For example, one major cable provider reserves the right to engage, ''without limitation,'' in ''port blocking, * * * traffic prioritization and protocol filtering.'' Further, a major mobile broadband provider prohibits use of its wireless service for ''downloading movies using peer-to-peer file sharing services'' and VoIP applications. And a cable modem manufacturer recently filed a formal complaint with the Commission alleging that a major broadband Internet access service provider has violated open Internet principles through overly restrictive device approval procedures.

These practices have occurred notwithstanding the Commission's adoption of open Internet principles in the *Internet Policy Statement;* enforcement proceedings against Madison River Communications and Comcast for their interference with VoIP and P2P traffic, respectively; Commission orders that required certain broadband providers to adhere to open Internet obligations; longstanding norms of Internet openness; and statements by major broadband providers that they support and are abiding by open Internet principles.

D. The Benefits of Protecting the Internet's Openness Exceed the Costs

Widespread interference with the Internet's openness would likely slow or even break the virtuous cycle of innovation that the Internet enables, and would likely cause harms that may be irreversible or very costly to undo. For example, edge providers could make investments in reliance upon exclusive preferential arrangements with broadband providers, and network management technologies may not be easy to change.[38] If the next revolutionary technology or business is not developed because broadband provider practices chill entry and innovation by edge providers, the missed opportunity may be significant, and lost innovation, investment, and competition may be impossible to restore after the fact. Moreover, because of the Internet's role as a general purpose technology, erosion of Internet openness threatens to harm innovation, investment in the core and at the edge of the network, and competition in many sectors, with a disproportionate effect on small, entering, and non-commercial edge providers that drive much of the innovation on the Internet.[39] Although harmful practices are not certain to become widespread, there are powerful reasons for immediate concern, as broadband providers have interfered with the open Internet in the past and have incentives and an increasing ability to do so in the future. Effective open Internet rules can prevent or reduce the risk of these harms, while helping to assure Americans unfettered access to diverse sources of news, information, and entertainment, as well as an array of technologies and devices that enhance health, education, and the environment.

By comparison to the benefits of these prophylactic measures, the costs associated with the open Internet rules adopted here are likely small. Broadband providers generally endorse openness norms—including the transparency and no blocking principles—as beneficial and in line with current and planned business practices (though they do not uniformly support rules making them enforceable).[40] Even to the extent rules require some additional disclosure of broadband providers' practices, the costs of compliance should be modest. In addition, the high-level rules we adopt carefully balance preserving the open Internet against avoiding unduly burdensome regulation. Our rules against blocking and unreasonable discrimination are subject to reasonable network management, and our rules do not prevent broadband providers from offering specialized services such as facilities-based VoIP. In short, rules that reinforce the openness that has supported the growth of the Internet, and do not substantially change this highly successful status quo, should not entail significant compliance costs.

Some commenters contend that open Internet rules are likely to reduce investment in broadband deployment. We disagree. There is no evidence that prior open Internet obligations have discouraged investment;[41] and

[36] *See* RCN Settlement Agreement sec. 3.2. RCN denied any wrongdoing, but it acknowledges that in order to ease network congestion, it targeted specific P2P applications. *See* Letter from Jean L. Kiddo, RCN, to Marlene Dortch, Secretary, FCC, GN Docket No. 09–191, WC Docket No. 07–52, at 2–5 (filed May 7, 2010).

[37] A 2008 study by the Max Planck Institute revealed significant blocking of BitTorrent applications in the United States. Comcast and Cox were both cited as examples of providers blocking traffic. *See generally* WCB Letter 12/10/10, Attach. at 75–80, Marcel Dischinger *et al.*, Max Planck Institute, Detecting BitTorrent Blocking (2008), *available at broadband.mpi-sws.org/transparency/results/08_imc_blocking.pdf; see also* WCB Letter 12/13/10, Attach. at 235–39, Max Planck Institute for Software Systems, Glasnost: Results from Tests for BitTorrent Traffic Blocking, broadband.mpi-sws.org/transparency/results; WCB Letter 12/13/10, Attach. at 298–315, Christian Kreibich *et al.*, Netalyzr: Illuminating Edge Network Neutrality, Security, and Performance 15 (2010), *available at http://www.icsi.berkeley.edu/pubs/techreports/TR-10-006.pdf.*

[38] As one example, Comcast's transition to a protocol-agnostic network management practice took almost nine months to complete. *See* Letter from Kathryn A. Zachem, V.P., Regulatory Affairs, Comcast Corp., to Marlene Dortch, Secretary, FCC, WC Docket No. 07–52 at 2 (filed July 10, 2008); Letter from Kathryn A. Zachem, V.P., Regulatory Affairs, Comcast Corp., to Marlene Dortch, Secretary, FCC, WC Docket No. 07–52 at Attach. B at 3, 9 (filed Sept. 19, 2008) (noting that the transition required ''lab tests, technical trials, customer feedback, vendor evaluations, and a third-party consulting analysis,'' as well as trials in five markets).

[39] *See, e.g.,* ALA Comments at 2; IFTA Comments at 14. Even some who generally oppose open Internet rules agree that extracting access fees from entities that produce content or services without the anticipation of financial reward would have significant adverse effects. *See* WCB Letter 12/10/10, Attach. at 35–80, C. Scott Hemphill, *Network Neutrality and the False Promise of Zero-Price Regulation,* 25 Yale J. on Reg. 135, 161–62 (2008) (''[S]ocial production has distinctive features that make it unusually valuable, but also unusually vulnerable, to a particular form of exclusion. That mechanism of exclusion is not subject to the prohibitions of antitrust law, moreover, presenting a relatively stronger argument for regulation.''), *cited in* Prof. Tim Wu Comments at 9 n.22.

[40] We note that many broadband providers are, or soon will be, subject to open Internet requirements in connection with grants under the Broadband Technology Opportunities Program (BTOP). The American Recovery and Reinvestment Act of 2009 required that nondiscrimination and network interconnection obligations be ''contractual conditions'' of all BTOP grants. Public Law 111–5, sec. 6001(j), 123 Stat. 115 (codified at 47 U.S.C. sec. 1305). These nondiscrimination and interconnection conditions require BTOP grantees, among other things, to adhere to the principles in the *Internet Policy Statement;* to display any network management policies in a prominent location on the service provider's Web site; and to offer interconnection where technically feasible.

[41] *See, e.g.,* Free Press Comments at 4, 23–25; Google Comments at 38–39; XO Comments at 12. In making prior investment decisions, broadband providers could not have reasonably assumed that the Commission would abstain from regulating in this area, as the Commission's decisions classifying cable modem service and wireline broadband Internet access service as information services included notices of proposed rulemaking seeking comment on whether the Commission should adopt

Continued

numerous commenters explain that, by preserving the virtuous circle of innovation, open Internet rules will increase incentives to invest in broadband infrastructure. Moreover, if permitted to deny access, or charge edge providers for prioritized access to end users, broadband providers may have incentives to allow congestion rather than invest in expanding network capacity. And as described in Part III, below, our rules allow broadband providers sufficient flexibility to address legitimate congestion concerns and other network management considerations. Nor is there any persuasive reason to believe that in the absence of open Internet rules broadband providers would lower charges to broadband end users, or otherwise change their practices in ways that benefit innovation, investment, competition, or end users.

The magnitude and character of the risks we identify make it appropriate to adopt prophylactic rules now to preserve the openness of the Internet, rather than waiting for substantial, pervasive, and potentially irreversible harms to occur before taking any action. The Supreme Court has recognized that even if the Commission cannot ''predict with certainty'' the future course of a regulated market, it may ''plan in advance of foreseeable events, instead of waiting to react to them.'' Moreover, as the Commission found in another context, ''[e]xclusive reliance on a series of individual complaints,'' without underlying rules, ''would prevent the Commission from obtaining a clear picture of the evolving structure of the entire market, and addressing competitive concerns as they arise. * * * Therefore, if the Commission exclusively relied on individual complaints, it would only become aware of specific * * * problems if and when the individual complainant's interests coincided with those of the interest of the overall 'public.' ''

Finally, we note that there is currently significant uncertainty regarding the future enforcement of open Internet principles and what constitutes appropriate network management, particularly in the wake of the court of appeals' vacatur of the *Comcast Network Management Practices Order.* A number of commenters, including leading broadband providers, recognize the benefits of greater predictability regarding open Internet protections.[42] Broadband providers benefit from increased certainty that they can reasonably manage their networks and innovate with respect to network technologies and business models. For those who communicate and innovate on the Internet, and for investors in edge technologies, there is great value in having confidence that the Internet will remain open, and that there will be a forum available to bring complaints about violations of open Internet standards.[43] End users also stand to benefit from assurances that services on which they depend ''won't suddenly be pulled out from under them, held ransom to extra payments either from the sites or from them.'' Providing clear yet flexible rules of the road that enable the Internet to continue to flourish is the central goal of the action we take in this Order.[44]

III. Open Internet Rules

To preserve the Internet's openness and broadband providers' ability to manage and expand their networks, we adopt high-level rules embodying four core principles: transparency, no blocking, no unreasonable discrimination, and reasonable network management. These rules are generally consistent with, and should not require

rules to protect consumers. *See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.,* Report and Order and NPRM, 20 FCC Rcd 14853, 14929–35, paras. 146–59 (2005); *Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities et al.,* Declaratory Ruling and NPRM, 17 FCC_ Rcd 4798, 4839–48, paras. 72–95 (2002) (seeking comment on whether the Commission should require cable operators to give unaffiliated ISPs access to broadband cable networks); *see also* AT&T Comments at 8 (''[T]he existing principles already address any blocking or degradation of traffic and thus eliminate any theoretical leverage providers may have to impose [unilateral 'tolls'].'').

[42] For example, AT&T has recognized that open Internet rules ''would reduce regulatory uncertainty, and should encourage investment and innovation in next generation broadband services and technologies.'' *See* WCB Letter 12/10/10, Attach. at 94, AT&T *Statement on Proposed FCC Rules to Preserve an Open Internet,* AT&T Public Policy Blog, Dec. 1, 2010, attpublicpolicy.com/government-policy/att-statement-on-proposed-fcc-rules-to-preserve-an-open-internet. Similarly, Comcast acknowledged that our proposed rules would strike ''a workable balance between the needs of the marketplace and the certainty that carefully-crafted and limited rules can provide to ensure that Internet freedom and openness are preserved.'' *See* David L. Cohen, *FCC Proposes Rules to Preserve an Open Internet,* comcastvoices, Dec. 1, 2010, *blog.comcast.com/2010/12/fcc-proposes-rules-to-preserve-an-open-internet.html; see also, e.g.,* Final Brief for Intervenors NCTA and NBC Universal, Inc. at 11–13; 19–22, *Comcast Corp.* v. *FCC,* 600 F.3d 642 (DC Cir. 2010) (No. 08–1291). In addition to broadband providers, an array of industry leaders, venture capitalists, and public interest groups have concluded that our rules will promote investment in the Internet ecosystem by removing regulatory uncertainty. *See* Free Press Comments at 10; Google Comments at 40; PIC Comments at 28; WCB Letter 12/10/10, Attach. at 91 (statement of CALinnovates.org), 96 (statement of Larry Cohen, president of the Communications Workers of America), 98 (statement of Ron Conway, founder of SV Angel), 99 (statement of Craig Newmark, founder of craigslist), 105 (statement of Dean Garfield, president and CEO of the Information Technology Industry Council), 111 (Dec. 8, 2010 letter from Jeremy Liew, Managing Director, Lightspeed Venture Partners to Julius Genachowski, FCC Chairman), 112 (Dec. 1, 2010 letter from Jed Katz, Managing Director, Javelin Venture Partners to Julius Genachowski, FCC Chairman), 127 (statement of Gary Shapiro, president and CEO of the Consumer Electronics Association), 128 (statement of Ram Shriram, founder of Sherpalo Ventures), 132 (statements of Rey Ramsey, President and CEO of TechNet, and John Chambers, Chairman and CEO of Cisco), 133 (statement of John Doerr, Kleiner Perkins Caufield & Byers); XO Reply at 6.

[43] For this reason, we are not persuaded that alternative approaches, such as rules that lack a formal enforcement mechanism, a transparency rule alone, or reliance entirely on technical advisory groups to resolve disputes, would adequately address the potential harms and be less burdensome than the rules we adopt here. *See, e.g.,* Verizon Comments at 130–34. In particular, we reject the notion that Commission action is unnecessary because the Department of Justice and the Federal Trade Commission (FTC) ''are well equipped to cure any market ills.'' *Id.* at 9. Our statutory responsibilities are broader than preventing antitrust violations or unfair competition. *See, e.g., News Corp. and DIRECTV Group, Inc.,* 23 FCC Rcd 3265, 3277–78, paras. 23–25 (2008). We must, for example, promote deployment of advanced telecommunications capability, ensure that charges in connection with telecommunications services are just and reasonable, ensure the orderly development of local television broadcasting, and promote the public interest through spectrum licensing. *See* CDT Comments at 8–9; Comm'r Jon Liebowitz, FTC, *Concurring Statement of Commissioner Jon Leibowitz Regarding the Staff Report: ''Broadband Connectivity Competition Policy''* (2007), *available at http://www.ftc.gov/speeches/leibowitz/V070000statement.pdf* (''[T]here is little agreement over whether antitrust, with its requirements for *ex post* case by case analysis, is capable of fully and in a timely fashion *resolving* many of the concerns that have animated the net neutrality debate.'').

[44] Contrary to the suggestion of some, neither the Department of Justice nor the FTC has concluded that the broadband market is competitive or that open Internet rules are unnecessary. *See* McDowell Statement at *4; Baker Statement at *3. In the submission in question, the Department observed that: (1) The wireline broadband market is highly concentrated, with most consumers served by at most two providers; (2) the prospects for additional wireline competition are dim due to the high fixed and sunk costs required to provide wireline broadband service; and (3) the extent to which mobile wireless offerings will compete with wireline offerings is unknown. *See* DOJ *Ex Parte* Jan. 4, 2010, GN Dkt. No. 09–51, at 8, 10, 13–14. The Department specifically endorsed requiring greater transparency by broadband providers, *id.* at 25–27, and recognized that in concentrated markets, like the broadband market, it is appropriate for policymakers to limit ''business practices that thwart innovation.'' *Id.* at 11. Finally, although the Department cautioned that care must be taken to avoid stifling infrastructure investment, it expressed particular concern about price regulation, which we are not adopting. *Id.* at 28. In 2007, the FTC issued a staff report on broadband competition policy. *See* FTC, *Broadband Connectivity Competition Policy* (June 2007). Like the Department, the FTC staff did not conclude that the broadband market is competitive. To the contrary, the FTC staff made clear that it had not studied the state of competition in any specific markets. *Id.* at 8, 105, 156. With regard to the merits of open Internet rules, the FTC staff report recited arguments pro and con, *see, e.g., id.* at 82, 105, 147–54, and called for additional study, *id.* at 7, 9–10, 157.

significant changes to, broadband providers' current practices, and are also consistent with the common understanding of broadband Internet access service as a service that enables one to go where one wants on the Internet and communicate with anyone else online.[45]

A. Scope of the Rules

We find that open Internet rules should apply to ''broadband Internet access service,'' which we define as:

A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this Part.

The term ''broadband Internet access service'' includes services provided over any technology platform, including but not limited to wire, terrestrial wireless (including fixed and mobile wireless services using licensed or unlicensed spectrum), and satellite.[46]

''Mass market'' means a service marketed and sold on a standardized basis to residential customers, small businesses, and other end-user customers such as schools and libraries. For purposes of this definition, ''mass market'' also includes broadband Internet access services purchased with the support of the E-rate program that may be customized or individually negotiated. The term does not include enterprise service offerings, which are typically offered to larger organizations through customized or individually negotiated arrangements.

''Broadband Internet access service'' encompasses services that ''provide the capability to transmit data to and receive data from all or substantially all Internet endpoints.'' To ensure the efficacy of our rules in this dynamic market, we also treat as a ''broadband Internet access service'' any service the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in these rules.

A key factor in determining whether a service is used to evade the scope of the rules is whether the service is used as a substitute for broadband Internet access service. For example, an Internet access service that provides access to a substantial subset of Internet endpoints based on end users preference to avoid certain content, applications, or services; Internet access services that allow some uses of the Internet (such as access to the World Wide Web) but not others (such as e-mail); or a ''Best of the Web'' Internet access service that provides access to 100 top Web sites could not be used to evade the open Internet rules applicable to ''broadband Internet access service.'' Moreover, a broadband provider may not evade these rules simply by blocking end users' access to some Internet endpoints. Broadband Internet access service likely does not include services offering connectivity to one or a small number of Internet endpoints for a particular device, *e.g.,* connectivity bundled with e-readers, heart monitors, or energy consumption sensors, to the extent the service relates to the functionality of the device.[47] Nor does broadband Internet access service include virtual private network services, content delivery network services, multichannel video programming services, hosting or data storage services, or Internet backbone services (if those services are separate from broadband Internet access service). These services typically are not mass market services and/or do not provide the capability to transmit data to and receive data from all or substantially all Internet endpoints.[48]

Although one purpose of our open Internet rules is to prevent blocking or unreasonable discrimination in transmitting online traffic for applications and services that compete with traditional voice and video services, we determine that open Internet rules applicable to fixed broadband providers should protect all types of Internet traffic, not just voice or video Internet traffic. This reflects, among other things, our view that it is generally preferable to neither require nor encourage broadband providers to examine Internet traffic in order to discern which traffic is subject to the rules. Even if we were to limit our rules to voice or video traffic, moreover, it is unlikely that broadband providers could reliably identify such traffic in all circumstances, particularly if the voice or video traffic originated from new services using uncommon protocols.[49] Indeed, limiting our rules to voice and video traffic alone could spark a costly and wasteful cat-and-mouse game in which edge providers and end users seeking to obtain the protection of our rules could disguise their traffic as protected communications.[50]

We recognize that there is one Internet (although it is comprised of a multitude of different networks), and that it should remain open and

[45] The definition of ''broadband Internet access service'' proposed in the *Open Internet NPRM* encompassed any ''Internet Protocol data transmission between an end user and the Internet.'' *Open Internet NPRM,* 24 FCC Rcd at 13128, App. A. Some commenters argued that this definition would cover a variety of services that do not constitute broadband Internet access service as end users and broadband providers generally understand that term, but that merely offer data transmission between a discrete set of Internet endpoints (for example, virtual private networks, or videoconferencing services). *See, e.g.,* AT&T Comments at 96–100; Communications Workers of America (CWA) Comments at 10–12; Sprint Reply at 16–17; *see also* CDT Comments at 49–50 (distinguishing managed (or specialized) services from broadband Internet access service by defining the former, in part, as data transmission ''between an end user and a *limited* group of parties or endpoints'') (emphasis added).

[46] In the *Open Internet NPRM,* we proposed separate definitions of the terms ''broadband Internet access,'' and ''broadband Internet access service.'' *Open Internet NPRM,* 24 FCC Rcd at 13128, App. A sec. 8.3. For purposes of these rules, we find it simpler to define just the service.

[47] To the extent these services are provided by broadband providers over last-mile capacity shared with broadband Internet access service, they would be specialized services.

[48] We also note that our rules apply only as far as the limits of a broadband provider's control over the transmission of data to or from its broadband customers.

[49] This is true notwithstanding the increasing sophistication of network management tools, described above in Part II.B. *See* Arthur Callado *et al., A Survey on Internet Traffic Identification,* 11 IEEE Commnc'ns Surveys & Tutorials 37, 49 (2009).

[50] *See* IETF, Reflections on Internet Transparency, RFC 4924 at 5 (Jul. 2007) (RFC 4924) (''In practice, filtering intended to block or restrict application usage is difficult to successfully implement without customer consent, since over time developers will tend to re-engineer filtered protocols so as to avoid the filters. Thus over time, filtering is likely to result in interoperability issues or unnecessary complexity. These costs come without the benefit of effective filtering. * * *''); IETF, Considerations on the Use of a Service Identifier in Packet Headers, RFC 3639 at 3 (Oct. 2003) (RFC 3639) (''Attempts by intermediate systems to impose service-based controls on communications against the perceived interests of the end parties to the communication are often circumvented. Services may be tunneled within other services, proxied by a collaborating external host (*e.g.,* an anonymous redirector), or simply run over an alternate port (*e.g.,* port 8080 vs port 80 for HTTP).''). *Cf.* RFC 3639 at 4 (''From this perspective of network and application utility, it is preferable that no action or activity be undertaken by any agency, carrier, service provider, or organization which would cause end-users and protocol designers to generally obscure service identification information from the IP packet header.''). Our rules are nationwide and do not vary by geographic area, notwithstanding potential variations across local markets for broadband Internet access service. Uniform national rules create a more predictable policy environment for broadband providers, many of which offer services in multiple geographic areas. *See, e.g.,* Level 3 Comments at 13; Charter Comments at iv. Edge providers will benefit from uniform treatment of their traffic in different localities and by different broadband providers. Broadband end users will also benefit from uniform rules, which protect them regardless of where they are located or which broadband provider they obtain service from.

interconnected regardless of the technologies and services end users rely on to access it. However, for reasons discussed in Part III.E below related to mobile broadband—including the fact that it is at an earlier stage and more rapidly evolving—we apply open Internet rules somewhat differently to mobile broadband than to fixed broadband at this time. We define ''fixed broadband Internet access service'' as a broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment, such as the modem that connects an end user's home router, computer, or other Internet access device to the network. This term encompasses fixed wireless broadband services (including services using unlicensed spectrum) and fixed satellite broadband services. We define ''mobile broadband Internet access service'' as a broadband Internet access service that serves end users primarily using mobile stations. Mobile broadband Internet access includes services that use smartphones as the primary endpoints for connection to the Internet.[51] The discussion in this Part applies to both fixed and mobile broadband, unless specifically noted. Part III.E further discusses application of open Internet rules to mobile broadband.

For a number of reasons, these rules apply only to the provision of broadband Internet access service and not to edge provider activities, such as the provision of content or applications over the Internet. First, the Communications Act particularly directs us to prevent harms related to the utilization of networks and spectrum to provide communication by wire and radio. Second, these rules are an outgrowth of the Commission's *Internet Policy Statement.*[52] The *Statement* was issued in 2005 when the Commission removed key regulatory protections from DSL service, and was intended to protect against the harms to the open Internet that might result from broadband providers' subsequent conduct. The Commission has always understood those principles to apply to broadband Internet access service only, as have most private-sector stakeholders.[53] Thus, insofar as these rules translate existing Commission principles into codified rules, it is appropriate to limit the application of the rules to broadband Internet access service. Third, broadband providers control access to the Internet for their subscribers and for anyone wishing to reach those subscribers.[54] They are therefore capable of blocking, degrading, or favoring any Internet traffic that flows to or from a particular subscriber.

We also do not apply these rules to dial-up Internet access service because telephone service has historically provided the easy ability to switch among competing dial-up Internet access services. Moreover, the underlying dial-up Internet access service is subject to protections under Title II of the Communications Act. The Commission's interpretation of those protections has resulted in a market for dial-up Internet access that does not present the same concerns as the market for broadband Internet access. No commenters suggested extending open Internet rules to dial-up Internet access service.

Finally, we decline to apply our rules directly to coffee shops, bookstores, airlines, and other entities when they acquire Internet service from a broadband provider to enable their patrons to access the Internet from their establishments (we refer to these entities as ''premise operators'').[55] These services are typically offered by the premise operator as an ancillary benefit to patrons. However, to protect end users, we include within our rules broadband Internet access services provided to premise operators for purposes of making service available to their patrons.[56] Although broadband providers that offer such services are subject to open Internet rules, we note that addressing traffic unwanted by a premise operator is a legitimate network management purpose.[57]

B. Transparency

Promoting competition throughout the Internet ecosystem is a central purpose of these rules. Effective disclosure of broadband providers' network management practices and the performance and commercial terms of their services promotes competition—as well as innovation, investment, end-user choice, and broadband adoption—in at least five ways. First, disclosure ensures that end users can make informed choices regarding the purchase and use of broadband service, which promotes a more competitive market for broadband services and can thereby reduce broadband providers' incentives and ability to violate open Internet principles.[58] Second, and relatedly, as end users' confidence in broadband providers' practices increases, so too should end users' adoption of broadband services—leading in turn to additional investment in Internet infrastructure as contemplated by Section 706 of the 1996 Act and other provisions of the communications laws.[59] Third,

[51] We note that Section 337(f)(1) of the Act excludes public safety services from the definition of mobile broadband Internet access service.

[52] When the Commission adopted the *Internet Policy Statement,* it promised to incorporate the principles into ''ongoing policymaking activities.'' *Internet Policy Statement,* 20 FCC Rcd at 14988, para. 5.

[53] *See, e.g., Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14976 (2005) (*Wireline Broadband Order*) (separate statement of Chairman Martin); *id.* at 14980 (Statement of Commissioner Copps, concurring); *id.* at 14983 (Statement of Commissioner Adelstein, concurring); Verizon June 8, 2009 Comments, GN Docket No. 09–51, at 86 (''These principles have helped to guide wireline providers' practices and to ensure that consumers' expectations for their public Internet access services are met.''). The Commission has conditioned wireline broadband provider merger approvals on the merged entity's compliance with these obligations. *See, e.g., SBC Commc'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control,* Memorandum Opinion and Order, 20 FCC Rcd 18290, 18392, para. 211 (2005).

[54] We thus find broadband providers distinguishable from other participants in the Internet marketplace. *See, e.g.,* Verizon Comments at 36–39 (discussing a variety of other participants in the Internet ecosystem); Verizon Reply at 36–37 (same); NCTA Comments at 47–49 (same); NCTA Reply at 22 (same).

[55] *See Communications Assistance for Law Enforcement Act and Broadband Access and Services,* First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 15006–07, para. 36, n.99 (2005) (*CALEA Order*). Consistent with the Commission's approach in the *CALEA Order,* ''[w]e note * * * that the provider of underlying [broadband service] facilities to such an establishment would be subject to [the rules].'' *Id.* at 15007, para. 36.

[56] We note that the premise operator that purchases the Internet service remains the end user for purposes of our rules, however. Moreover, although not bound by our rules, we encourage premise operators to disclose relevant restrictions on broadband service they make available to their patrons.

[57] We also do not include within the rules free access to individuals' wireless networks, even if those networks are intentionally made available to others. *See* Electronic Frontier Foundation (EFF) Comments at 25–28. No commenter argued that open Internet rules should apply to individual operators of wireless networks in these circumstances.

[58] Broadband providers may have an incentive not to provide such information to end users, as doing so can lessen switching costs for end users. Third-party information sources such as Consumer Reports and the trade press do not routinely provide such information. *See* CDT Comments at 31; CWA Comments at 21; DISH Comments at 2; Google Comments at ii, 64–66; Level 3 Comments at 13; Sandoval Reply at 60. Economic literature in this area also confirms that policies requiring firms to disclose information generally benefit competition and consumers. *See, e.g.,* Mark Armstrong, *Interactions Between Competition and Consumer Policy,* 4 Competition Policy Int'l 97 113–16 (Spring 2008), *eprints.ucl.ac.uk/7634/1/7634.pdf.*

[59] *See* PIC Reply at 16–18; Free Press Comments at 43–45; Ad Hoc Comments at ii; CDT Comments at 5–7; ALA Comments at 3; National Hispanic Media Coalition (NHMC) Comments at 8; National Broadband Plan at 168, 174 (lack of trust in Internet is significant factor preventing non-adopters from subscribing to broadband services); 47 U.S.C. secs.

disclosure supports innovation, investment, and competition by ensuring that startups and other edge providers have the technical information necessary to create and maintain online content, applications, services, and devices, and to assess the risks and benefits of embarking on new projects. Fourth, disclosure increases the likelihood that broadband providers will abide by open Internet principles, and that the Internet community will identify problematic conduct and suggest fixes.[60] Transparency thereby increases the chances that harmful practices will not occur in the first place and that, if they do, they will be quickly remedied, whether privately or through Commission oversight. Fifth, disclosure will enable the Commission to collect information necessary to assess, report on, and enforce the other open Internet rules. For all of these reasons, most commenters agree that informing end users, edge providers, and the Commission about the network management practices, performance, and commercial terms of broadband Internet access service is a necessary and appropriate step to help preserve an open Internet.

The *Open Internet NPRM* sought comment on what end users and edge providers need to know about broadband service, how this information should be disclosed, when disclosure should occur, and where information should be available. The resulting record supports adoption of the following rule:

A person engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.[61]

The rule does not require public disclosure of competitively sensitive information or information that would compromise network security or undermine the efficacy of reasonable network management practices.[62] For example, a broadband provider need not publicly disclose information regarding measures it employs to prevent spam practices at a level of detail that would enable a spammer to defeat those measures.

Despite broad agreement that broadband providers should disclose information sufficient to enable end users and edge providers to understand the capabilities of broadband services, commenters disagree about the appropriate level of detail required to achieve this goal. We believe that at this time the best approach is to allow flexibility in implementation of the transparency rule, while providing guidance regarding effective disclosure models. We expect that effective disclosures will likely include some or all of the following types of information, timely and prominently disclosed in plain language accessible to current and prospective end users and edge providers, the Commission, and third parties who wish to monitor network management practices for potential violations of open Internet principles:[63]

Network Practices

- *Congestion Management:* If applicable, descriptions of congestion management practices; types of traffic subject to practices; purposes served by practices; practices' effects on end users' experience; criteria used in practices, such as indicators of congestion that trigger a practice, and the typical frequency of congestion; usage limits and the consequences of exceeding them; and references to engineering standards, where appropriate.[64]
- *Application-Specific Behavior:* If applicable, whether and why the provider blocks or rate-controls specific protocols or protocol ports, modifies protocol fields in ways not prescribed by the protocol standard, or otherwise inhibits or favors certain applications or classes of applications.
- *Device Attachment Rules:* If applicable, any restrictions on the types of devices and any approval procedures for devices to connect to the network. (For further discussion of required disclosures regarding device and application approval procedures for mobile broadband providers, see *infra.*)
- *Security:* If applicable, practices used to ensure end-user security or security of the network, including types of triggering conditions that cause a mechanism to be invoked (but excluding information that could reasonably be used to circumvent network security).

Performance Characteristics

- *Service Description:* A general description of the service, including the service technology, expected and actual access speed and latency, and the suitability of the service for real-time applications.
- *Impact of Specialized Services:* If applicable, what specialized services, if any, are offered to end users, and whether and how any specialized services may affect the last-mile capacity available for, and the performance of, broadband Internet access service.

Commercial Terms

- *Pricing:* For example, monthly prices, usage-based fees, and fees for early termination or additional network services.
- *Privacy Policies:* For example, whether network management practices entail inspection of network traffic, and

151, 230, 254, 1302. A recent FCC survey found that among non-broadband end users, 46% believed that the Internet is dangerous for kids, and 57% believed that it was too easy for personal information to be stolen online. John B. Horrigan, FCC Survey: Broadband Adoption & Use in America 17 (Mar. 2010), *available at http://www.fcc.gov/DiversityFAC/032410/consumer-survey-horrigan.pdf.*

[60] On a number of occasions, broadband providers have blocked lawful traffic without informing end users or edge providers. In addition to the Madison River and Comcast-BitTorrent incidents described above, broadband providers appear to have covertly blocked thousands of BitTorrent uploads in the United States throughout early 2008. *See* Marcel Dischinger *et al.;* Catherine Sandoval, *Disclosure, Deception, and Deep-Packet Inspection,* 78 Fordham L. Rev. 641, 666–84 (2009).

[61] For purposes of these rules, ''consumer'' includes any subscriber to the broadband provider's broadband Internet access service, and ''person'' includes any ''individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized,'' *cf.* 47 CFR 54.8(a)(6). We also expect broadband providers to disclose information about the impact of ''specialized services,'' if any, on last-mile capacity available for, and the performance of, broadband Internet access service.

[62] Commenters disagree on the risks of requiring disclosure of information regarding technical, proprietary, and security-related management practices. *Compare, e.g.,* American Cable Association (ACA) Comments at 17; AFTRA *et al.* Comments at ii, 16; Cox Comments at 11; Fiber-to-the-Home Council (FTTH) Comments at 3, 27; Libove Comments at 4; Sprint Comments at 16; T-Mobile Comments at 39, *with, e.g.,* Free Press Comments at 117–18; Free Press Reply at 17–19; Digital Education Coalition (DEC) Comments at 14; NJRC Comments at 20–21. We may subsequently require disclosure of such information to the Commission; to the extent we do, we will ensure that such information is protected consistent with existing Commission procedures for treatment of confidential information.

[63] In setting forth the following categories of information subject to the transparency principle, we assume that the broadband provider has chosen to offer its services on standardized terms, although providers of ''information services'' are not obligated to do so. If the provider tailors its terms of service to meet the requirements of an individual end user, those terms must at a minimum be disclosed to the end user in accordance with the transparency principle.

[64] We note that the description of congestion management practices provided by Comcast in the wake of the Comcast-BitTorrent incident likely satisfies the transparency rule with respect to congestion management practices. *See* Comcast, Network Management Update, *http://www.comcast.net/terms/network/update;* Comcast, Comcast Corporation Description of Planned Network Management Practices to be Deployed Following the Termination of Current Practices, *downloads.comcast.net/docs/Attachment_B_Future_Practices.pdf.*

whether traffic information is stored, provided to third parties, or used by the carrier for non-network management purposes.

• *Redress Options:* Practices for resolving end-user and edge provider complaints and questions.

We emphasize that this list is not necessarily exhaustive, nor is it a safe harbor—there may be additional information, not included above, that should be disclosed for a particular broadband service to comply with the rule in light of relevant circumstances. Broadband providers should examine their network management practices and current disclosures to determine what additional information, if any, should be disclosed to comply with the rule.

In the *Open Internet NPRM,* we proposed that broadband providers publicly disclose their practices on their Web sites and in promotional materials. Most commenters agree that a provider's Web site is a natural place for end users and edge providers to find disclosures, and several contend that a broadband provider's only obligation should be to post its practices on its Web site. Others assert that disclosures should also be displayed prominently at the point-of-sale, in bill inserts, and in the service contract. We agree that broadband providers must, at a minimum, prominently display or provide links to disclosures on a publicly available, easily accessible Web site that is available to current and prospective end users and edge providers as well as to the Commission, and must disclose relevant information at the point of sale. Current end users must be able to easily identify which disclosures apply to their service offering. Broadband providers' online disclosures shall be considered disclosed to the Commission for purposes of monitoring and enforcement. We may require additional disclosures directly to the Commission.

We anticipate that broadband providers may be able to satisfy the transparency rule through a single disclosure, and therefore do not at this time require multiple disclosures targeted at different audiences.[65] We also decline to adopt a specific format for disclosures, and instead require that disclosure be sufficiently clear and accessible to meet the requirements of the rule.[66] We will, however, continue to monitor compliance with this rule, and may require adherence to a particular set of best practices in the future.[67]

Although some commenters assert that a disclosure rule will impose significant burdens on broadband providers, no commenter cites any particular source of increased costs, or attempts to estimate costs of compliance. For a number of reasons, we believe that the costs of the disclosure rule we adopt in this Order are outweighed by the benefits of empowering end users and edge providers to make informed choices and of facilitating the enforcement of the other open Internet rules. First, we require only that providers post disclosures on their Web sites and provide disclosure at the point of sale, not that they bear the cost of printing and distributing bill inserts or other paper documents to all existing customers.[68] Second, although we may subsequently determine that it is appropriate to require that specific information be disclosed in particular ways, the transparency rule we adopt in this Order gives broadband providers some flexibility to determine what information to disclose and how to disclose it. We also expressly exclude from the rule competitively sensitive information, information that would compromise network security, and information that would undermine the efficacy of reasonable network management practices. Third, as discussed below, by setting the effective date of these rules as November 20, 2011, we give broadband providers adequate time to develop cost effective methods of compliance.

A key purpose of the transparency rule is to enable third-party experts such as independent engineers and consumer watchdogs to monitor and evaluate network management practices, in order to surface concerns regarding potential open Internet violations. We also note the existence of free software tools that enable Internet end users and edge providers to monitor and detect blocking and discrimination by broadband providers.[69] Although current tools cannot detect all instances of blocking or discrimination and cannot substitute for disclosure of network management policies, such tools may help supplement the transparency rule we adopt in this Order.[70]

Although transparency is essential for preserving Internet openness, we disagree with commenters that suggest it is alone sufficient to prevent open Internet violations. The record does not convince us that a transparency requirement by itself will adequately constrain problematic conduct, and we therefore adopt two additional rules, as discussed below.

C. No Blocking and No Unreasonable Discrimination

1. No Blocking

The freedom to send and receive lawful content and to use and provide applications and services without fear of blocking is essential to the Internet's openness and to competition in adjacent markets such as voice communications and video and audio programming. Similarly, the ability to connect and use

[65] But we expect that broadband providers will make disclosures in a manner accessible by people with disabilities.

[66] Some commenters advocate for a standard disclosure format. *See, e.g.,* Adam Candeub *et al.* Reply at 7; Level 3 Comments at 13; Sprint Comments at 17. Others support a plain language requirement. *See, e.g.,* NATOA Comments at 7; NJRC Comments at 19; IFTA Comments at 16. Other commenters, however, argue against the imposition of a standard format as inflexible and difficult to implement. *See, e.g.,* Cox Comments at 10; National Telecommunications Cooperative Association (NTCA) Comments at 9; Qwest Comments at 11. The approach we adopt is similar to the approach adopted in the Commission's *Truth-in-Billing Proceeding,* where we set out basic guidelines. *Truth-in-Billing and Billing Format,* First Report and Order and Further NPRM, 14 FCC Rcd 7492, 7495–96, paras. 3–5 (1999).

[67] We may address this issue as part of a separate, ongoing proceeding regarding transparency for communications services more generally. *Consumer Information and Disclosure,* Notice of Inquiry, FCC 09–68 (rel. Aug. 28, 2010). Relatedly, the Commission has begun an effort, in partnership with broadband providers, to measure the actual speed and performance of broadband service, and we expect that the data generated by this effort will inform Commission efforts regarding disclosure. *See Comment Sought on Residential Fixed Broadband Services Testing and Measurement Solution, Pleading Cycle Established,* Public Notice, 25 FCC Rcd 3836 (2010) (SamKnows project); *Comment Sought on Measurement of Mobile Broadband Network Performance and Coverage,* Public Notice, 25 FCC Rcd 7069 (2010) (same).

[68] In a separate proceeding, the Commission has determined that the costs of making disclosure materials available on a service provider's Web site are outweighed by the public benefits where the disclosure requirement applies only to entities already using the Internet for other purposes. *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Report and Order, 23 FCC Rcd 1274, 1277–78, paras. 7–10 (2008).

[69] *See* Sandoval Comments at 4–5. For example, the Max Planck Institute analyzed data collected by the *Glasnost* tool from thousands of end user, and found that broadband providers were discriminating against application-specific traffic. *See* WCB Letter 12/13/10, Attach. at 235–39, Max Planck Institute for Software Systems, Glasnost: Results from Tests for BitTorrent Traffic Blocking, broadband.mpi-sws.org/transparency/results. *Netalyzr* is a National Science Foundation-funded project that tests a wide range of network characteristics. *See* International Computer Science Institute, Netalyzer, netalyzr.icsi.berkeley.edu. Similar tools are being developed for mobile broadband services. *See, e.g.,* WindRider, Mobile Network Neutrality Monitoring System, *http://www.cs.northwestern.edu/~ict992/mobile.htm.*

[70] For an example of a public-private partnership that could encourage the development of new tools to assess network management practices, see FCC Open Internet Apps Challenge, *http://www.openinternet.gov/challenge.*

any lawful devices that do not harm the network helps ensure that end users can enjoy the competition and innovation that result when device manufacturers can depend on networks' openness.[71] Moreover, the no-blocking principle has been broadly accepted since its inclusion in the Commission's *Internet Policy Statement.* Major broadband providers represent that they currently operate consistent with this principle and are committed to continuing to do so.[72]

In the *Open Internet NPRM,* the Commission proposed codifying the original three *Internet Policy Statement* principles that addressed blocking of content, applications and services, and devices. After consideration of the record, we consolidate the proposed rules into a single rule for fixed broadband providers:[73]

A person engaged in the provision of fixed broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management.

The phrase ''content, applications, services'' refers to all traffic transmitted to or from end users of a broadband Internet access service, including traffic that may not fit cleanly into any of these categories.[74] The rule protects only transmissions of lawful content, and does not prevent or restrict a broadband provider from refusing to transmit unlawful material such as child pornography.[75]

We also note that the rule entitles end users to both connect and use any lawful device of their choice, provided such device does not harm the network.[76] A broadband provider may require that devices conform to widely accepted and publicly-available standards applicable to its services.[77]

We make clear that the no-blocking rule bars broadband providers from impairing or degrading particular content, applications, services, or non-harmful devices so as to render them effectively unusable (subject to reasonable network management).[78] Such a prohibition is consistent with the observation of a number of commenters that degrading traffic can have the same effects as outright blocking, and that such an approach is consistent with the traditional interpretation of the Internet Policy Statement. The Commission has recognized that in some circumstances the distinction between blocking and degrading (such as by delaying) traffic is merely ''semantic.''

Some concerns have been expressed that broadband providers may seek to charge edge providers simply for delivering traffic to or carrying traffic from the broadband provider's end-user customers. To the extent that a content, application, or service provider could avoid being blocked only by paying a fee, charging such a fee would not be permissible under these rules.[79]

2. No Unreasonable Discrimination

Based on our findings that fixed broadband providers have incentives and the ability to discriminate in their handling of network traffic in ways that can harm innovation, investment, competition, end users, and free expression, we adopt the following rule:

A person engaged in the provision of fixed broadband Internet access service, insofar as such person is so engaged, shall not unreasonably discriminate in transmitting lawful network traffic over a consumer's broadband Internet access service. Reasonable network management shall not constitute unreasonable discrimination.

The rule strikes an appropriate balance between restricting harmful conduct and permitting beneficial forms of differential treatment. As the rule specifically provides, and as discussed below, discrimination by a broadband provider that constitutes ''reasonable network management'' is ''reasonable'' discrimination.[80] We provide further guidance regarding distinguishing reasonable from unreasonable discrimination:

Transparency. Differential treatment of traffic is more likely to be reasonable the more transparent to the end user that treatment is. The Commission has previously found broadband provider practices to violate open Internet principles in part because they were not disclosed to end users. Transparency is particularly important with respect to the discriminatory treatment of traffic as it is often difficult for end users to determine the causes of slow or poor performance of content, applications, services, or devices.

End-User Control. Maximizing end-user control is a policy goal Congress

[71] The Commission has long protected end users' rights to attach lawful devices that do not harm communications networks. *See, e.g., Use of the Carterfone Device in Message Toll Telephone Service,* 13 FCC 2d 420, 424 (1968); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry),* Final Decision, 77 FCC 2d 384, 388 (1980); *see also* Michael T. Hoeker, *From Carterfone to the iPhone: Consumer Choice in the Wireless Telecommunications Marketplace,* 17 CommLaw Conspectus 187, 192 (2008); Kevin Werbach, *The Federal Computer Commission,* 84 N.C. L. Rev. 1, 21 (2005).

[72] As Qwest states, ''Qwest and virtually all major broadband providers have supported the FCC Internet Policy Principles and voluntarily abide by those principles as good policy.'' Qwest PN Comments at 2–3, 5; *see also, e.g.,* Comcast Comments at 27; Clearwire Comments at 1; Margaret Boles, *AT&T on Comcast* v. *FCC Decision,* AT&T Pub. Pol'y Blog (Apr. 6, 2010), *attpublicpolicy.com/broadband-policy/att-statement-on-comcast-v-fcc-decision.*

[73] As described below, we adopt a tailored version of this rule for mobile broadband providers.

[74] *See* William Lehr *et al.* Comments at 27 (''While the proposed rules of the FCC appear to make a clear distinction between applications and services on the one hand (rule 3) and content (rule 1), we believe that there will be some activities that do not fit cleanly into these two categories''); PIC Comments at 39; RFC 4924 at 5. For this reason the rule may prohibit the blocking of a port or particular protocol used by an application, without blocking the application completely, unless such practice is reasonable network management. *See* Distributed Computing Industry Ass'n (DCIA) Comments at 7 (discussing work-arounds by P2P companies facing port blocking or other practices); Sandvine Reply at 3; RFC 4924. The rule also is neutral with respect to where in the protocol stack or in the network blocking could occur.

[75] The ''no blocking'' rule does not impose any independent legal obligation on broadband Internet access service providers to be the arbiter of what is lawful. *See, e.g.,* WISPA Comments at 12–13.

[76] We note that MVPDs, pursuant to Section 629 and the Commission's implementing regulations, are already subject to similar requirements that give end users the right to attach devices to an MVPD system provided that the attached equipment does not cause electronic or physical harm or assist in the unauthorized receipt of service. *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices,* Report and Order, 13 FCC Rcd 14775 (1998); 47 U.S.C.. 549; 47 CFR 76.1201–03. Nothing in this Order is intended to alter those existing rules.

[77] For example, a DOCSIS-based broadband provider is not required to support a DSL modem. *See* ACA Comments at 13–14; *see also* Satellite Broadband Commenters Comments at 8–9 (noting that an antenna and associated modem must comply with equipment and protocol standards set by satellite companies, but that ''consumers can [then] attach * * * any personal computer or wireless router they wish'').

[78] We do not find it appropriate to interpret our rule to impose a blanket prohibition on degradation of traffic more generally. Congestion ordinarily results in degradation of traffic, and such an interpretation could effectively prohibit broadband providers from permitting congestion to occur on their networks. Although we expect broadband providers to continue to expand the capacity of their networks—and we believe our rules help ensure that they continue to have incentives to do so—we recognize that some network congestion may be unavoidable. *See, e.g.,* AT&T Comments at 65; TWC Comments at 16–18; Internet Freedom Coalition Reply at 5.

[79] We do not intend our rules to affect existing arrangements for network interconnection, including existing paid peering arrangements.

[80] We also make clear that open Internet protections coexist with other legal and regulatory frameworks. Except as otherwise described in this Order, we do not address the possible application of the no unreasonable discrimination rule to particular circumstances, despite the requests of certain commenters. *See, e.g.,* AT&T Comments at 64–77, 108–12; PAETEC Comments at 13; *see also* AT&T Comments at 56 (arguing that some existing agreements could be at odds with limitations on pay for priority arrangements). Rather, we find it more appropriate to address the application of our rule in the context of an appropriate Commission proceeding with the benefit of a more comprehensive record.

recognized in Section 230(b) of the Communications Act, and end-user choice and control are touchstones in evaluating the reasonableness of discrimination.[81] As one commenter observes, ''letting users choose how they want to use the network enables them to use the Internet in a way that creates more value for them (and for society) than if network providers made this choice,'' and ''is an important part of the mechanism that produces innovation under uncertainty.'' Thus, enabling end users to choose among different broadband offerings based on such factors as assured data rates and reliability, or to select quality-of-service enhancements on their own connections for traffic of their choosing, would be unlikely to violate the no unreasonable discrimination rule, provided the broadband provider's offerings were fully disclosed and were not harmful to competition or end users.[82] We recognize that there is not a binary distinction between end-user controlled and broadband-provider controlled practices, but rather a spectrum of practices ranging from more end-user controlled to more broadband provider-controlled.[83] And we do not suggest that practices controlled entirely by broadband providers are by definition unreasonable.

Some commenters suggest that open Internet protections would prohibit broadband providers from offering their subscribers different tiers of service or from charging their subscribers based on bandwidth consumed. We are, of course, always concerned about anti-consumer or anticompetitive practices, and we remain so here. However, prohibiting tiered or usage-based pricing and requiring all subscribers to pay the same amount for broadband service, regardless of the performance or usage of the service, would force lighter end users of the network to subsidize heavier end users. It would also foreclose practices that may appropriately align incentives to encourage efficient use of networks. The framework we adopt in this Order does not prevent broadband providers from asking subscribers who use the network less to pay less, and subscribers who use the network more to pay more.

Use-Agnostic Discrimination. Differential treatment of traffic that does not discriminate among specific uses of the network or classes of uses is likely reasonable. For example, during periods of congestion a broadband provider could provide more bandwidth to subscribers that have used the network less over some preceding period of time than to heavier users. Use-agnostic discrimination (sometimes referred to as application-agnostic discrimination) is consistent with Internet openness because it does not interfere with end users' choices about which content, applications, services, or devices to use. Nor does it distort competition among edge providers.

Standard Practices. The conformity or lack of conformity of a practice with best practices and technical standards adopted by open, broadly representative, and independent Internet engineering, governance initiatives, or standards-setting organizations is another factor to be considered in evaluating reasonableness. Recognizing the important role of such groups is consistent with Congress's intent that our rules in the Internet area should not ''fetter[ ]'' the free market with unnecessary regulation,[84] and is consistent with broadband providers' historic reliance on such groups.[85] We make clear, however, that we are not delegating authority to interpret or implement our rules to outside bodies.

In evaluating unreasonable discrimination, the types of practices we would be concerned about include, but are not limited to, discrimination that harms an actual or potential competitor to the broadband provider (such as by degrading VoIP applications or services when the broadband provider offers telephone service), that harms end users (such as by inhibiting end users from accessing the content, applications, services, or devices of their choice), or that impairs free expression (such as by slowing traffic from a particular blog because the broadband provider disagrees with the blogger's message).

For a number of reasons, including those discussed above in Part II.B, a commercial arrangement between a broadband provider and a third party to directly or indirectly favor some traffic over other traffic in the broadband Internet access service connection to a subscriber of the broadband provider (*i.e.,* ''pay for priority'') would raise significant cause for concern.[86] First, pay for priority would represent a significant departure from historical and current practice. Since the beginning of the Internet, Internet access providers have typically not charged particular content or application providers fees to reach the providers' retail service end users or struck pay-for-priority deals, and the record does not contain evidence that U.S. broadband providers currently engage in such arrangements. Second this departure from longstanding norms could cause great harm to innovation and investment in and on the Internet. As discussed above, pay-for-priority arrangements could raise barriers to entry on the Internet by requiring fees from edge providers, as well as transaction costs arising from the need to reach agreements with one or more broadband providers to access a critical mass of potential end users. Fees imposed on edge providers may be excessive because few edge providers have the ability to bargain for lesser fees, and because no broadband provider internalizes the full costs of reduced innovation and the exit of edge providers from the market. Third, pay-for-priority arrangements may particularly harm non-commercial end users, including individual bloggers, libraries, schools, advocacy organizations, and other speakers, especially those who communicate through video or other content sensitive

[81] ''The rapidly developing array of Internet and other interactive computer services * * * offer[ ] users a great degree of control over the information that they receive, as well as *the potential for even greater control in the future* as technology develops.'' 47 U.S.C. 230(a)(1)–(2) (emphasis added).

[82] In these types of arrangements ''[t]he broadband provider does not get any particular leverage, because the ability to select which traffic gets priority lies with individual subscribers. Meanwhile, an entity providing content, applications, or services does not need to worry about striking up relationships with various broadband providers to obtain top treatment. All it needs to worry about is building relationships with users and explaining to those users whether and how they may want to select the particular content, application, or service for priority treatment.'' CDT Comments at 27; *see also* Amazon Comments at 2–3; SureWest Comments at 32–33.

[83] We note that default settings set by broadband providers would likely be considered more broadband provider-controlled than end-user controlled. *See generally* Jason Scott Johnston, *Strategic Bargaining and the Economic Theory of Contract Default Rules,* 100 Yale L.J. 615 (1990); Daniel Kahneman *et al., Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias,* 5 J. Econ. Persp. 193, 197–99 (1991).

[84] 47 U.S.C. 230(b)(2).

[85] Broadband providers' practices historically have relied on the efforts of such groups, which follow open processes conducive to broad participation. *See, e.g.,* William Lehr *et al.* Comments at 24; Comcast Comments at 53–59; FTTH Comments at 12; Internet Society (ISOC) Comments at 1–2; OIC Comments at 50–52; Comcast Reply at 5–7. Moreover, Internet community governance groups develop and encourage widespread implementation of best practices, supporting an environment that facilitates innovation.

[86] The *Open Internet NPRM* proposed a flat ban on discrimination and interpreted that requirement to prohibit broadband providers from ''charg[ing] a content, application, or service provider for enhanced or prioritized access to the subscribers of the broadband Internet access service provider.'' *Open Internet NPRM,* 24 FCC Rcd at 13104–05, paras. 104, 106. In the context of a ''no unreasonable discrimination'' rule that leaves interpretation to a case-by-case process, we instead adopt the approach to pay for priority described in this paragraph.

to network congestion. Even open Internet skeptics acknowledge that pay for priority may disadvantage non-commercial uses of the network, which are typically less able to pay for priority, and for which the Internet is a uniquely important platform. Fourth, broadband providers that sought to offer pay-for-priority services would have an incentive to limit the quality of service provided to non-prioritized traffic. In light of each of these concerns, as a general matter, it is unlikely that pay for priority would satisfy the ''no unreasonable discrimination'' standard. The practice of a broadband Internet access service provider prioritizing its own content, applications, or services, or those of its affiliates, would raise the same significant concerns and would be subject to the same standards and considerations in evaluating reasonableness as third-party pay-for-priority arrangements.[87]

Because we agree with the diverse group of commenters who argue that any nondiscrimination rule should prohibit only unreasonable discrimination, we decline to adopt the more rigid nondiscrimination rule proposed in the *Open Internet NPRM.* A strict nondiscrimination rule would be in tension with our recognition that some forms of discrimination, including end-user controlled discrimination, can be beneficial. The rule we adopt provides broadband providers' sufficient flexibility to develop service offerings and pricing plans, and to effectively and reasonably manage their networks. We disagree with commenters who argue that a standard based on ''reasonableness'' or ''unreasonableness'' is too vague to give broadband providers fair notice of what is expected of them. This is not so. ''Reasonableness'' is a well-established standard for regulatee conduct.[88] As other commenters have pointed out, the term ''reasonable'' is ''both administrable and indispensable to the sound administration of the nation's telecommunications laws.''[89]

We also reject the argument that only ''anticompetitive'' discrimination yielding ''substantial consumer harm'' should be prohibited by our rules. We are persuaded those proposed limiting terms are unduly narrow and could allow discriminatory conduct that is contrary to the public interest. The broad purposes of this rule—to encourage competition and remove impediments to infrastructure investment while protecting consumer choice, free expression, end-user control, and the ability to innovate without permission—cannot be achieved by preventing only those practices that are demonstrably anticompetitive or harmful to consumers. Rather, the rule rests on the general proposition that broadband providers should not pick winners and losers on the Internet—even for reasons that may be independent of providers' competitive interests or that may not immediately or demonstrably cause substantial consumer harm.[90]

We disagree with commenters who argue that a rule against unreasonable discrimination violates Section 3(51) of the Communications Act for those broadband providers that are telecommunications carriers but do not provide their broadband Internet access service as a telecommunications service.[91] Section 3(51) provides that a ''telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services.''[92] This limitation is not relevant to the Commission's actions here.[93] The hallmark of common

[87] We reject arguments that our approach to pay-for-priority arrangements is inconsistent with allowing content-delivery networks (CDNs). *See, e.g.,* Cisco Comments at 11–12; TWC Comments at 21–22, 65, 89–90; AT&T Reply at 49–53; Bright House Reply at 9. CDN services are designed to reduce the capacity requirements and costs of the CDN's edge provider clients by hosting the content for those clients closer to end users. Unlike broadband providers, third-party CDN providers do not control the last-mile connection to the end user. And CDNs that do not deploy within an edge provider's network may still reach an end user via the user's broadband connection. *See* CDT Comments at 25 n.84; George Ou Comments (Preserving the Open and Competitive Bandwidth Market) at 3; *see also* Cisco Comments at 11; FTTH Comments at 23–24. Moreover, CDNs typically provide a benefit to the sender and recipient of traffic without causing harm to third-party traffic. Though we note disagreement regarding the impact of CDNs on other traffic, the record does not demonstrate that the use of CDNs has any material adverse effect on broadband end users' experience of traffic that is not delivered via a CDN. *Compare* Letter from S. Derek Turner, Free Press, to Chairman Genachowski *et al.,* FCC, GN Docket No. 09–191, WC Docket No. 07–52, at 1–2 (filed July 29, 2010) *with* Letter from Richard Bennett, ITIF, to Chairman Genachowski *et al.,* FCC, GN Docket No. 09–191, WC Docket No. 07–52, Attach. at 12 (filed Aug. 9, 2010). Indeed, the same benefits derived from using CDNs can be achieved if an edge provider's own servers happen to be located in close proximity to end users. Everything on the Internet that is accessible to an end user is not, and cannot be, in equal proximity from that end user. *See* John Staurulakis Inc. Comments at 5; Bret T. Swanson Reply at 4. Finally, CDN providers unaffiliated with broadband providers generally do not compete with edge providers and thus generally lack economic incentives (or the ability) to discriminate against edge providers. *See* Akamai Comments at 12; NASUCA Reply at 7; NCTA Reply at 25. We likewise reject proposals to limit our rules to actions taken at or below the ''network layer.'' *See, e.g.,* Google Comments at 24–26; Vonage Reply at 2; CDT Reply at 18; Prof. Scott Jordan (Jordan) Comments at 3; *see also* Scott Jordan, *A Layered Network Approach to Net Neutrality,* Int'l J. of Commc'n 427, 432–33 (2007) (describing the OSI layers model and the actions of routers at and below the network layer) *attached to* Letter from Scott Jordan, Professor, University of California–Irvine, to Office of the Secretary, FCC, GN Docket No. 09–191, WC Docket No. 07–52 (filed Mar. 22, 2010). We are not persuaded that the proposed limitation is necessary or appropriate in this context.

[88] As recently as 1995, Congress adopted the venerable ''reasonableness'' standard when it recodified provisions of the Interstate Commerce Act. ICC Termination Act of 1995, Public Law 104–88, sec. 106(a) (now codified at 49 U.S.C. 15501).

[89] AT&T Reply at 33–34 (''And no one has seriously suggested that Section 202 should itself be amended to remove the 'unreasonable' qualifier on the ground that the qualifier is too 'murky' or 'complex.' Seventy-five years of experience have shown that qualifier to be both administrable and indispensable to the sound administration of the nation's telecommunications laws.''); *see also* Comcast Reply at 26 (''[T]he Commission should embrace the strong guidance against an overbroad rule and, instead, develop a standard based on 'unreasonable and anticompetitive discrimination.' ''); Sprint Reply at 23 (''The unreasonable discrimination standard contained in Section 202(a) of the Act contains the very flexibility the Commission needs to distinguish desirable from improper discrimination.''); *Thomas* v. *Chicago Park District,* 534 U.S. 316, 324 (2002) (holding that denial of a permit ''when the intended use would present an unreasonable danger to the health and safety of park users or Park District employees'' is a standard that is ''reasonably specific and objective, and do[es] not leave the decision 'to the whim of the administrator' '') (citation omitted); *Cameron* v. *Johnson,* 390 U.S. 611, 615–16 (1968) (stating that ''unreasonably'' ''is a widely used and well understood word, and clearly so when juxtaposed with 'obstruct' and 'interfere' '').

[90] For example, slowing BitTorrent packets might only affect a few end users, but it would harm BitTorrent. More significantly, it would raise concerns among other end users and edge providers that their traffic could be slowed for any reason—or no reason at all—which could in turn reduce incentives to innovate and invest, and change the fundamental nature of the Internet as an open platform.

[91] *See, e.g.,* AT&T Comments at 209–11; Verizon Comments at 93–95; CTIA PN Reply at 20–21. We do not read the Supreme Court's decision in *FCC* v. *Midwest Video Corp.* as addressing rules like the rules we adopt in this Order. 440 U.S. 689 (1979). There, the Court held that obligations on cable providers to ''hold out dedicated channels on a first-come, nondiscriminatory basis * * * relegated cable systems, *pro tanto,* to common-carrier status.'' *Id.* at 700–01. None of the rules adopted in this Order requires a broadband provider to ''hold out'' any capacity for the exclusive use of third parties or make a public offering of its service.

[92] 47 U.S.C. 153(51). Section 332(c)(2) contains a restriction similar to that of sec. 3(51): ''A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act.'' *Id.* sec. 332(c)(2). Because we are not imposing any common carrier obligations on any broadband provider, including providers of ''private mobile service'' as defined in Section 332(d)(3), our requirements do not violate the limitation in Section 332(c)(2).

[93] Courts have acknowledged that the Commission is entitled to deference in interpreting the definition of ''common carrier.'' *See AT&T* v. *FCC,* 572 F.2d 17, 24 (2d Cir. 1978) (citing *Red Lion Broad. Co.* v. *FCC,* 395 U.S. 367, 381 (1969)). In adopting the rule against unreasonable

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carriage is an ''undertak[ing] to carry for all people indifferently.'' [94] An entity ''will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal'' with potential customers.[95] The customers at issue here are the end users who subscribe to broadband Internet access services.[96] With respect to those customers, a broadband provider may make individualized decisions. A broadband provider that chooses not to offer its broadband Internet access service on a common carriage basis can, for instance, decide on a case-by-case basis whether to serve a particular end user, what connection speed(s) to offer, and at what price. The open Internet rules become effective only *after* such a provider has voluntarily entered into a mutually satisfactory arrangement with the end user, which may be tailored to that user. Even then, as discussed above, the allowance for reasonable disparities permits customized service features such as those that enhance end user control over what Internet content is received. This flexibility to customize service arrangements for a particular customer is the hallmark of private carriage, which is the antithesis of common carriage.[97]

D. Reasonable Network Management

Since at least 2005, when the Commission adopted the *Internet Policy Statement,* we have recognized that a flourishing and open Internet requires robust, well-functioning broadband networks, and accordingly that open Internet protections require broadband providers to be able to reasonably manage their networks. The open Internet rules we adopt in this Order expressly provide for and define ''reasonable network management'' in order to provide greater clarity to broadband providers, network equipment providers, and Internet end users and edge providers regarding the types of network management practices that are consistent with open Internet protections.

In the *Open Internet NPRM,* the Commission proposed that open Internet rules be subject to reasonable network management, consisting of ''reasonable practices employed by a provider of broadband Internet access service to: (1) Reduce or mitigate the effects of congestion on its network or to address quality-of-service concerns; (2) address traffic that is unwanted by users or harmful; (3) prevent the transfer of unlawful content; or (4) prevent the unlawful transfer of content.'' The proposed definition also stated that reasonable network management consists of ''other reasonable network management practices.''

Upon reviewing the record, we conclude that the definition of reasonable network management should provide greater clarity regarding the standard used to gauge reasonableness, expressly account for technological differences among networks that may affect reasonable network management, and omit elements that do not relate directly to network management functions and are therefore better handled elsewhere in the rules—for example, measures to prevent the transfer of unlawful content. We therefore adopt the following definition of reasonable network management:

A network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

Legitimate network management purposes include: ensuring network security and integrity, including by addressing traffic that is harmful to the network; addressing traffic that is unwanted by end users (including by premise operators), such as by providing services or capabilities consistent with an end user's choices regarding parental controls or security capabilities; and reducing or mitigating the effects of congestion on the network. The term ''particular network architecture and technology'' refers to the differences across access platforms such as cable, DSL, satellite, and fixed wireless.

As proposed in the *Open Internet NPRM,* we will further develop the scope of reasonable network management on a case-by-case basis, as complaints about broadband providers' actual practices arise. The novelty of Internet access and traffic management questions, the complex nature of the Internet, and a general policy of restraint in setting policy for Internet access service providers weigh in favor of a case-by-case approach.

In taking this approach, we recognize the need to balance clarity with flexibility.[98] We discuss below certain

discrimination, we rely, in part, on our authority under section 706, which is not part of the Communications Act. Congress enacted section 706 as part of the Telecommunications Act of 1996 and more recently codified the provision in Chapter 12 of Title 47, at 47 U.S.C. 1302. The seven titles that comprise the Communications Act appear in Chapter 5 of Title 47. Consequently, even if the rule against unreasonable discrimination were interpreted to require common carriage in a particular case, that result would not run afoul of Section 3(51) because a network operator would be treated as a common carrier pursuant to Section 706, not ''under'' the Communications Act.

[94] *Nat'l Ass'n of Reg. Util. Comm'rs* v. *FCC,* 525 F.2d 630, 641 (DC Cir. 1976) (*NARUC I*) (quoting *Semon* v. *Royal Indemnity Co.,* 279 F.2d 737, 739 (5th Cir. 1960) and other cases); *see also* Verizon Comments at 93 (''[T]he primary sine qua non of common carrier status is a quasi-public character, which arises out of the undertaking 'to carry for all people indifferently * * *.' '' (quoting *Nat'l Ass'n of Reg. Util. Comm'rs* v. *FCC,* 533 F.2d 601, 608 (DC Cir. 1976) (*NARUC II*)). *But see* CTIA Reply at 57 (suggesting that nondiscrimination is the *sine qua non* of common carrier regulation referred to in *NARUC II*).

[95] *NARUC I,* 525 F.2d at 641 (citing *Semon,* 279 F.2d at 739–40). Commenters assert that any obligation that is similar to an obligation that appears in Title II of the Act is a ''common carrier'' obligation. *See, e.g.,* AT&T Comments at 210–11. We disagree. Just because an obligation appears within Title II does not mean that the imposition of that obligation or a similar one results in ''treating'' an entity as a common carrier. For the meaning of common carriage treatment, which is not defined in the Act, we look to caselaw as discussed in the text.

[96] Even if edge providers were considered ''customers'' of the broadband provider, the broadband provider would not be a common carrier with regard to the role it plays in transmitting edge providers' traffic. Our rules permit broadband providers to engage in reasonable network management and, under certain circumstances, block traffic and devices, engage in reasonable discrimination, and prioritize traffic at subscribers' request. Blocking or deprioritizing certain traffic is far from ''undertak[ing] to carry for all [edge providers] indifferently.'' *See NARUC I,* 525 F.2d at 641.

[97] *See Sw. Bell Tel. Co.* v. *FCC,* 19 F.3d 1475, 1481 (DC Cir. 1994) (''If the carrier chooses its clients on an individual basis and determines in each particular case whether and on what terms to serve and there is no specific regulatory compulsion to serve all indifferently, the entity is a private carrier for that particular service and the Commission is not at liberty to subject the entity to regulation as a common carrier.'') (internal quotation marks omitted). Although promoting competition throughout the Internet ecosystem is a central purpose of these rules, we decline to adopt as a rule the *Internet Policy Statement* principle regarding consumers' entitlement to competition. We agree with those commenters that argue that the principle is too vague to be reduced to a rule and that the proposed rule as stated failed to provide any meaningful guidance regarding what conduct is and is not permissible. *See, e.g.,* Verizon Comments at 4, 53; TPPF Comments at 7. A rule barring broadband providers from depriving end users of their entitlement to competition does not appear to be a viable method of promoting competition. We also do not wish to duplicate competitive analyses carried out by the Department of Justice, the FTC, or the Commission's merger review process.

[98] Some parties contend that there will be uncertainty associated with open Internet rules, subject to reasonable network management, which will limit provider flexibility, stifle innovation, and slow providers' response time in managing their networks. *See, e.g.,* ADTRAN Comments at 11–13; Barbara Esbin (Esbin) Comments at 7. For example, some parties express concern that that the definition proposed in the *Open Internet NPRM* provided insufficient guidance regarding what standard will be used to determine whether a given practice is ''reasonable.'' *See, e.g.,* ADTRAN Comments at 13; AT&T Comments at 13; CDT Comments at 38; PIC Comments at 35–36, 39; Texas PUC Comments at 6–7; Verizon Reply at 8, 75, 78. Others contend that although clarity is needed, the Commission should not list categories of activities considered reasonable. *See, e.g.,* Free Press Comments at 82, 85–86. We seek to balance these interests through general rules designed to give

principles and considerations that will inform the Commission's case-by-case analysis. Further, although broadband providers are not required to seek permission from the Commission before deploying a network management practice, they or others are free to do so, for example by seeking a declaratory ruling.[99]

We reject proposals to define reasonable network management practices more expansively or more narrowly than stated above. We agree with commenters that the Commission should not adopt the ''narrowly or carefully tailored'' standard discussed in the *Comcast Network Management Practices Order.*[100] We find that this standard is unnecessarily restrictive and may overly constrain network engineering decisions. Moreover, the ''narrowly tailored'' language could be read to import strict scrutiny doctrine from constitutional law, which we are not persuaded would be helpful here. Broadband providers may employ network management practices that are appropriate and tailored to the network management purpose they seek to achieve, but they need not necessarily employ the most narrowly tailored practice theoretically available to them.

We also acknowledge that reasonable network management practices may differ across platforms. For example, practices needed to manage congestion on a fixed satellite network may be inappropriate for a fiber-to-the-home network. We also recognize the unique network management challenges facing broadband providers that use unlicensed spectrum to deliver service to end users. Unlicensed spectrum is shared among multiple users and technologies and no single user can control or assure access to the spectrum. We believe the concept of reasonable network management is sufficiently flexible to afford such providers the latitude they need to effectively manage their networks.[101]

The principles guiding case-by-case evaluations of network management practices are much the same as those that guide assessments of ''no unreasonable discrimination,'' and include transparency, end-user control, and use- (or application-) agnostic treatment. We also offer guidance in the specific context of the legitimate network management purposes listed above.

Network Security or Integrity and Traffic Unwanted by End Users. Broadband providers may implement reasonable practices to ensure network security and integrity, including by addressing traffic that is harmful to the network.[102] Many commenters strongly support allowing broadband providers to implement such network management practices. Some commenters, however, express concern that providers might implement anticompetitive or otherwise problematic practices in the name of protecting network security. We make clear that, for the singling out of any specific application for blocking or degradation based on harm to the network to be a reasonable network management practice, a broadband provider should be prepared to provide a substantive explanation for concluding that the particular traffic is harmful to the network, such as traffic that constitutes a denial-of-service attack on specific network infrastructure elements or exploits a particular security vulnerability.

Broadband providers also may implement reasonable practices to address traffic that a particular end user chooses not to receive. Thus, for example, a broadband provider could provide services or capabilities consistent with an end user's choices regarding parental controls, or allow end users to choose a service that provides access to the Internet but not to pornographic Web sites. Likewise, a broadband provider serving a premise operator could restrict traffic unwanted by that entity, though such restrictions should be disclosed. Our rule will not impose liability on a broadband provider where such liability is prohibited by Section 230(c)(2) of the Act.[103]

We note that, in some cases, mechanisms that reduce or eliminate some forms of harmful or unwanted traffic may also interfere with legitimate network traffic. Such mechanisms must be appropriate and tailored to the threat; should be evaluated periodically as to their continued necessity; and should allow end users to opt-in or opt-out if possible.[104] Disclosures of network management practices used to address network security or traffic a particular end user does not want to receive should clearly state the objective of the mechanism and, if applicable, how an end user can opt in or out of the practice.

Network Congestion. Numerous commenters support permitting the use of reasonable network management practices to address the effects of congestion, and we agree that congestion management may be a legitimate network management purpose. For example, broadband providers may need to take reasonable steps to ensure that heavy users do not crowd out others. What constitutes congestion and what measures are reasonable to address it may vary depending on the technology platform for a particular broadband Internet access service. For example, if cable modem subscribers in a particular neighborhood are experiencing congestion, it may be reasonable for a broadband provider to temporarily limit

providers sufficient flexibility to implement necessary network management practices, coupled with guidance regarding certain principles and considerations that will inform the Commission's case-by-case analysis.

[99] *See* 47 CFR 1.2 (providing for ''a declaratory ruling terminating a controversy or removing uncertainty'').

[100] *See Comcast Network Management Practices Order,* 23 FCC Rcd at 13055–56, para. 47 (stating that, to be considered ''reasonable'' a network management practice ''should further a critically important interest and be narrowly or carefully tailored to serve that interest''); *see also* AT&T Comments at 186–87 (arguing that the *Comcast* standard is too narrow); Level 3 Comments at 14; PAETEC Comments at 17–18. *But see* Free Press Comments at 91–92 (stating that the Commission should not retreat from the fundamental framework of the *Comcast* standard). A ''reasonableness'' standard also has the advantage of being administrable and familiar.

[101] *See* Appendix A, sec. 8.11. We recognize that the standards for fourth-generation (4G) wireless networks include the capability to prioritize particular types of traffic, and that other broadband Internet access services may incorporate similar features. Whether particular uses of these technologies constitute reasonable network management will depend on whether they are appropriate and tailored to achieving a legitimate network management purpose.

[102] In the context of broadband Internet access service, techniques to ensure network security and integrity are designed to protect the access network and the Internet against actions by malicious or compromised end systems. Examples include spam, botnets, and distributed denial of service attacks. Unwanted traffic includes worms, malware, and viruses that exploit end-user system vulnerabilities; denial of service attacks; and spam. *See* IETF, Report from the IAB workshop on Unwanted Traffic March 9–10, 2006, RFC 4948, at 31 (Aug. 2007), *available at http://www.rfc-editor.org/rfc/rfc4948.txt.*

[103] *See* 47 U.S.C. 230(c)(2) (no provider of an interactive computer service shall be held liable on account of ''(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in [subparagraph (A)]'').

[104] For example, a network provider might be able to assess a network endpoint's posture—see IETF, Network Endpoint Assessment (NEA): Overview and Requirements, RFC 5209 (Jun. 2008); Internet Engineering Task Force, PA–TNC: A Posture Attribute (PA) Protocol Compatible with Trusted Network Connect (TNC), RFC 5792 (Mar. 2010)—and tailor port blocking accordingly. With the posture assessment, an end user might then opt out of the network management mechanism by upgrading the operating system or installing a suitable firewall.

the bandwidth available to individual end users in that neighborhood who are using a substantially disproportionate amount of bandwidth.

We emphasize that reasonable network management practices are not limited to the categories described here, and that broadband providers may take other reasonable steps to maintain the proper functioning of their networks, consistent with the definition of reasonable network management we adopt. As we stated in the *Open Internet NPRM,* ''we do not presume to know now everything that providers may need to do to provide robust, safe, and secure Internet access to their subscribers, much less everything they may need to do as technologies and usage patterns change in the future.'' Broadband providers should have flexibility to experiment, innovate, and reasonably manage their networks.

E. Mobile Broadband

There is one Internet, which should remain open for consumers and innovators alike, although it may be accessed through different technologies and services. The record demonstrates the importance of freedom and openness for mobile broadband networks, and the rationales for adopting high-level open Internet rules, discussed above, are for the most part as applicable to mobile broadband as they are to fixed broadband. Consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission are as important when end users are accessing the Internet via mobile broadband as via fixed. And there have been instances of mobile providers blocking certain third-party applications, particularly applications that compete with the provider's own offerings; relatedly, concerns have been raised about inadequate transparency regarding network management practices. We also note that some mobile broadband providers affirmatively state they do not oppose the application of openness rules to mobile broadband.

However, as explained in the *Open Internet NPRM* and subsequent Public Notice, mobile broadband presents special considerations that suggest differences in how and when open Internet protections should apply. Mobile broadband is an earlier-stage platform than fixed broadband, and it is rapidly evolving. For most of the history of the Internet, access has been predominantly through fixed platforms—first dial-up, then cable modem and DSL services. As of a few years ago, most consumers used their mobile phones primarily to make phone calls and send text messages, and most mobile providers offered Internet access only via ''walled gardens'' or stripped down Web sites. Today, however, mobile broadband is an important Internet access platform that is helping drive broadband adoption, and data usage is growing rapidly. The mobile ecosystem is experiencing very rapid innovation and change, including an expanding array of smartphones, aircard modems, and other devices that enable Internet access; the emergence and rapid growth of dedicated-purpose mobile devices like e-readers; the development of mobile application (''app'') stores and hundreds of thousands of mobile apps; and the evolution of new business models for mobile broadband providers, including usage-based pricing.

Moreover, most consumers have more choices for mobile broadband than for fixed (particularly fixed wireline) broadband.[105] Mobile broadband speeds, capacity, and penetration are typically much lower than for fixed broadband, though some providers have begun offering 4G service that will enable offerings with higher speeds and capacity and lower latency than previous generations of mobile service.[106] In addition, existing mobile networks present operational constraints that fixed broadband networks do not typically encounter. This puts greater pressure on the concept of ''reasonable network management'' for mobile providers, and creates additional challenges in applying a broader set of rules to mobile at this time. Further, we recognize that there have been meaningful recent moves toward openness in and on mobile broadband networks, including the introduction of third-party devices and applications on a number of mobile broadband networks, and more open mobile devices. In addition, we anticipate soon seeing the effects on the market of the openness conditions we imposed on mobile providers that operate on upper 700 MHz C Block (''C Block'') spectrum,[107] which includes Verizon Wireless, one of the largest mobile wireless carriers in the U.S.

In light of these considerations, we conclude it is appropriate to take measured steps at this time to protect the openness of the Internet when accessed through mobile broadband. We apply certain of the open Internet rules, requiring compliance with the transparency rule and a basic no-blocking rule.[108]

1. Application of Openness Principles to Mobile Broadband

a. Transparency

The wide array of commenters who support a disclosure requirement generally agree that all broadband providers, including mobile broadband providers, should be required to disclose their network management practices. Although some mobile broadband providers argue that the dynamic nature of mobile network management makes meaningful disclosure difficult, we conclude that end users need a clear understanding of network management practices, performance, and commercial terms, regardless of the broadband platform they use to access the Internet. Although a number of mobile broadband

[105] *Compare* National Broadband Plan at 37 (Exh. 4–A) *with* 39–40 (Exh. 4–E). However, in many areas of the country, particularly in rural areas, there are fewer options for mobile broadband. *See Fourteenth Wireless Competition Report* at para. 355, tbl. 39 & chart 48. This may result in some consumers having fewer options for mobile broadband than for fixed.

[106] Some fixed broadband providers contend that current mobile broadband offerings directly compete with their offerings. *See* Letter from Michael D. Saperstein, Jr., Director of Regulatory Affairs, Frontier Communications, to Marlene Dortch, Secretary, FCC, GN Docket No. 09–191 (filed Dec. 15, 2010) (discussing entry of wireless service into the broadband market and its effect on wireline broadband subscribership) and Attach. at 1 (citing reports that LTE is ''a very practical and encouraging substitution for DSL, particularly when you look at rural markets''); Letter from Malena F. Barzilai, Federal Government Affairs, Windstream Communications, Inc., to Marlene Dortch, Secretary, FCC, GN Docket No. 09–191 (filed Dec. 15, 2010). As part of our ongoing monitoring, we will track such competition and any impact these rules may have on it.

[107] The first network using spectrum subject to these rules has recently started offering service. *See* Press Release, Verizon Wireless, Blazingly Fast: Verizon Wireless Launches The World's Largest 4G LTE Wireless Network On Sunday, Dec. 5 (Dec. 5, 2010), *available at news.vzw.com/news/2010/12/pr2010-12-03.html.* Specifically, licensees subject to the rule must provide an open platform for third-party applications and devices. *See 700 MHz Second Report and Order,* 22 FCC Rcd 15289; 47 CFR 27.16. The rules we adopt in this Order are independent of those open platform requirements. We expect our observations of how the 700 MHz open platform rules affect the mobile broadband sector to inform our ongoing analysis of the application of openness rules to mobile broadband generally. *700 MHz Second Report and Order,* 22 FCC Rcd at 15364–65, 15374, paras. 205, 229. A number of commenters support the Commission's waiting to determine whether to apply openness rules to mobile wireless until the effects of the C Block openness requirement can be observed. *See, e.g.,* AT&T PN Reply, at 32–37; Cricket PN Reply at 11. We also note that some providers tout openness as a competitive advantage. *See, e.g.,* Clearwire Comments at 7; Verizon Reply at 47–52.

[108] We note that section 332(a) requires us, ''[i]n taking actions to manage the spectrum to be made available for use by the private mobile service,'' to consider various factors, including whether our actions will ''improve the efficiency of spectrum use and reduce the regulatory burden,'' and ''encourage competition.'' 47 U.S.C. 332(a)(2), (3). To the extent section 332(a) applies to our actions in this Order, we note that we have considered these factors.

providers have adopted voluntary codes of conduct regarding disclosure, we believe that a uniform rule applicable to all mobile broadband providers will best preserve Internet openness by ensuring that end users have sufficient information to make informed choices regarding use of the network; and that content, application, service, and device providers have the information needed to develop, market, and maintain Internet offerings. The transparency rule will also aid the Commission in monitoring the evolution of mobile broadband and adjusting, as appropriate, the framework adopted in this Order.

Therefore, as stated above, we require mobile broadband providers to follow the same transparency rule applicable to fixed broadband providers. Further, although we do not require mobile broadband providers to allow third-party devices or all third-party applications on their networks, we nonetheless require mobile broadband providers to disclose their third-party device and application certification procedures, if any; to clearly explain their criteria for any restrictions on use of their network; and to expeditiously inform device and application providers of any decisions to deny access to the network or of a failure to approve their particular devices or applications. With respect to the types of disclosures required to satisfy the rule, we direct mobile broadband providers to the discussion in Part III.B, above. Additionally, mobile broadband providers should follow the guidance the Commission provided to licensees of the upper 700 MHz C Block spectrum regarding compliance with their disclosure obligations, particularly regarding disclosure to third-party application developers and device manufacturers of criteria and approval procedures (to the extent applicable).[109] For example, these disclosures include, to the extent applicable, establishing a transparent and efficient approval process for third parties, as set forth in Section 27.16(d).[110]

b. No Blocking

We adopt a no blocking rule that guarantees end users' access to the Web and protects against mobile broadband providers' blocking applications that compete with their other primary service offering—voice and video telephony—while ensuring that mobile broadband providers can engage in reasonable network management:

> A person engaged in the provision of mobile broadband Internet access service, insofar as such person is so engaged, shall not block consumers from accessing lawful Web sites, subject to reasonable network management; nor shall such person block applications that compete with the provider's voice or video telephony services, subject to reasonable network management.

We understand a ''provider's voice or video telephony services'' to include a voice or video telephony service provided by any entity in which the provider has an attributable interest.[111] We emphasize that the rule protects any and all applications that compete with a mobile broadband provider's voice or video telephony services. Further, degrading a particular Web site or an application that competes with the provider's voice or video telephony services so as to render the Web site or application effectively unusable would be considered tantamount to blocking (subject to reasonable network management).

End users expect to be able to access any lawful Web site through their broadband service, whether fixed or mobile. Web browsing continues to generate the largest amount of mobile data traffic, and applications and services are increasingly being provisioned and used entirely through the Web, without requiring a standalone application to be downloaded to a device. Given that the mobile Web is well-developed relative to other mobile applications and services, and enjoys similar expectations of openness that characterize Web use through fixed broadband, we find it appropriate to act here. We also recognize that accessing a Web site typically does not present the same network management issues that downloading and running an app on a device may present. At this time, a prohibition on blocking access to lawful Web sites (including any related traffic transmitted or received by any plug-in, scripting language, or other browser extension) appropriately balances protection for the ability of end users to access content, applications, and services through the Web and assurance that mobile broadband providers can effectively manage their mobile broadband networks.

Situations have arisen in which mobile wireless providers have blocked third-party applications that arguably compete with their telephony offerings.[112] This type of blocking confirms that mobile broadband providers may have strong incentives to limit Internet openness when confronted with third-party applications that compete with their telephony services. Some commenters express concern that wireless providers could favor their own applications over the applications of unaffiliated developers, under the guise of reasonable network management. A number of commenters assert that blocking or hindering the delivery of services that compete with those offered by the mobile broadband provider, such as over-the-top VoIP, should be prohibited. According to Skype, for example, there is ''a consensus that at a minimum, a 'no blocking' rule should apply to voice and video applications that compete with broadband network operators' own service offerings.'' Clearwire argues that the Commission should restrict only practices that appear to have an element of anticompetitive intent. Although some commenters support a broader no-blocking rule, we believe that a targeted prophylactic rule is appropriate at this

[109] *700 MHz Second Report and Order,* 22 FCC Rcd at 15371–72, para. 224 (''[A] C Block licensee must publish [for example, by posting on the provider's Web site] standards no later than the time at which it makes such standards available to any preferred vendors (*i.e.,* vendors with whom the provider has a relationship to design products for the provider's network). We also require the C Block licensee to provide to potential customers notice of the customers' rights to request the attachment of a device or application to the licensee's network, and notice of the licensee's process for customers to make such requests, including the relevant network criteria.'').

[110] *See* 47 CFR 27.16(d) (''Access requests. (1) Licensees shall establish and publish clear and reasonable procedures for parties to seek approval to use devices or applications on the licensees' networks. A licensee must also provide to potential customers notice of the customers' rights to request the attachment of a device or application to the licensee's network, and notice of the licensee's process for customers to make such requests, including the relevant network criteria. (2) If a licensee determines that a request for access would violate its technical standards or regulatory requirements, the licensee shall expeditiously provide a written response to the requester specifying the basis for denying access and providing an opportunity for the requester to modify its request to satisfy the licensee's concerns.'').

[111] For the purposes of these rules, an attributable interest includes equity ownership interest in or *de facto* control of, or by, the entity that provides the voice or video telephony service. An attributable interest also includes any exclusive arrangement for such voice or video telephony service, including *de facto* exclusive arrangements.

[112] *See, e.g.,* Letter from James W. Cicconi, AT&T Services, Inc., to Ruth Milkman, Chief, Wireless Telecommunications Bureau, FCC, RM–11361, RM–11497 at 6–8 (filed Aug. 21, 2009); DISH PN Reply at 7 (''VoIP operators such as Skype have faced significant difficulty in gaining access across wireless Internet connections.''). Mobile providers blocking VoIP services is an issue not only in the United States, but worldwide. In Europe, the Body of European Regulators for Electronic Communications reported, among other issues, a number of cases of blocking or charging extra for VoIP services by certain European mobile operators. *See* European Commission, Information Society and Media Directorate-General Report on the Public Consultation on ''The Open Internet and Net Neutrality in Europe'' 2, (Nov. 9, 2010), *ec.europa.eu/information_society/policy/ecomm/library/public_consult/net_neutrality/index_en.htm.*

time,[113] and necessary to deter this type of behavior in the future.

The prohibition on blocking applications that compete with a broadband provider's voice or video telephony services does not apply to a broadband provider's operation of application stores or their functional equivalent. In operating app stores, broadband providers compete directly with other types of entities, including device manufacturers and operating system developers,[114] and we do not intend to limit mobile broadband providers' flexibility to curate their app stores similar to app store operators that are not subject to these rules.

As indicated in Part III.D above, the reasonable network management definition takes into account the particular network architecture and technology of the broadband Internet access service. Thus, in determining whether a network management practice is reasonable, the Commission will consider technical, operational, and other differences between wireless and other broadband Internet access platforms, including differences relating to efficient use of spectrum. We anticipate that conditions in mobile broadband networks may necessitate network management practices that would not be necessary in most fixed networks, but conclude that our definition of reasonable network management is flexible enough to accommodate such differences.

2. Ongoing Monitoring

Although some commenters support applying the no unreasonable discrimination rule to mobile broadband,[115] for the reasons discussed above, we decline to do so, preferring at this time to put in place basic openness protections and monitor the development of the mobile broadband marketplace. We emphasize that our decision to proceed incrementally with respect to mobile broadband at this time should not suggest that we implicitly approve of any provider behavior that runs counter to general open Internet principles. Beyond those practices expressly prohibited by our rules, other conduct by mobile broadband providers, particularly conduct that would violate our rules for fixed broadband, may not necessarily be consistent with Internet openness and the public interest.

We are taking measured steps to protect openness for mobile broadband at this time in part because we want to better understand how the mobile broadband market is developing before determining whether adjustments to this framework are necessary. To that end, we will closely monitor developments in the mobile broadband market, with a particular focus on the following issues: (1) The effects of these rules, the C Block conditions, and market developments related to the openness of the Internet as accessed through mobile broadband; (2) any conduct by mobile broadband providers that harms innovation, investment, competition, end users, free expression or the achievement of national broadband goals; (3) the extent to which differences between fixed and mobile rules affect fixed and mobile broadband markets, including competition among fixed and mobile broadband providers; and (4) the extent to which differences between fixed and mobile rules affect end users for whom mobile broadband is their only or primary Internet access platform.[116] We will investigate and evaluate concerns as they arise. We also will adjust our rules as appropriate. To aid the Commission in these tasks, we will create an Open Internet Advisory Committee, as discussed below, with a mandate that includes monitoring and regularly reporting on the state of Internet openness for mobile broadband.

Further, we reaffirm our commitment to enforcing the open platform requirements applicable to upper 700 MHz C Block licensees. The first networks using this spectrum are now becoming operational.

F. Other Laws and Considerations

Open Internet rules are not intended to expand or contract broadband providers' rights or obligations with respect to other laws or safety and security considerations, including the needs of emergency communications and law enforcement, public safety, and national security authorities. Similarly, open Internet rules protect only *lawful* content, and are not intended to inhibit efforts by broadband providers to address unlawful transfers of content. For example, there should be no doubt that broadband providers can prioritize communications from emergency responders, or block transfers of child pornography. To make clear that open Internet protections can and must coexist with these other legal frameworks, we adopt the following clarifying provisions:

Nothing in this part supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.

Nothing in this part prohibits reasonable efforts by a provider of broadband Internet access service to address copyright infringement or other unlawful activity.

1. Emergency Communications and Safety and Security Authorities

Commenters are broadly supportive of our proposal to state that open Internet rules do not supersede any obligation a broadband provider may have—or limit its ability—to address the needs of emergency communications or law enforcement, public safety, or homeland or national security authorities (together, ''safety and security authorities''). Broadband providers have obligations under statutes such as the Communications Assistance for Law Enforcement Act, the Foreign Intelligence Surveillance Act, and the Electronic Communications Privacy Act that could in some circumstances intersect with open Internet protections, and most commenters recognize the benefits of clarifying that these obligations are not inconsistent with open Internet rules. Likewise, in connection with an emergency, there

[113] *See* Letter from Jonathan Spalter, Chairman, Mobile Future, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09–191 & 10–127, at 3 n.16 (filed Dec. 13, 2010) (supporting tailored prohibition on blocking applications), *citing* AT&T Comments at 65; T–Mobile Comments, Declaration of Grant Castle at 4. The no blocking rule that we adopt for mobile broadband involves distinct treatment of applications that compete with the provider's voice and video telephony services, whereas we have adopted a broader traffic-based approach for fixed broadband. We acknowledge that this rule for mobile broadband may lead in some limited measure to the traffic-identification difficulties discussed with respect to fixed broadband. We find, however, that the reasons for taking our cautious approach to mobile broadband outweigh this concern, particularly in light of our intent to monitor developments involving mobile broadband, including this and other aspects of the practical implementation of our rules.

[114] For example, app stores are operated by manufacturers and operating system developers such as Nokia, Apple, RIM, Google, Microsoft, and third parties such as GetJar. *See also* AT&T PN Comments at 63–66 (emphasizing the competitiveness of the market for mobile apps, including the variety of sources from which consumers may obtain applications); T-Mobile PN Comments at 21 (''The competitive wireless marketplace will continue to discipline app store owners * * * that exclude third-party apps from their app stores entirely, eliminating the need for Commission action.''). We note, however, that for a few devices, such as Apple's iPhone, there may be fewer options for accessing and distributing apps.

[115] *See, e.g,* Free Press Comments at 125–26; OIC Comments at 36–39. *See also, e.g.,* Leap Comments at 17–22; Sprint Reply at 24–26. A number of commenters suggest that openness rules should be applied identically to all broadband platforms. *See, e.g.,* CenturyLink Comments at 22–23; Comcast Comments at 32; DISH Network PN Comments at 17; NCTA PN Comments at 11; Qwest PN Comments at 12–19; SureWest PN Comments at 18–20; TWC PN Comments at 33–35; Vonage PN Comments at 10–18; Windstream PN Comments at 6–19.

[116] We note that mobile broadband is the only or primary broadband Internet access platform used by many Americans.

may be Federal, state, Tribal, and local public safety entities; homeland security personnel; and other authorities that need guaranteed or prioritized access to the Internet in order to coordinate disaster relief and other emergency response efforts, or for other emergency communications. In the *Open Internet NPRM* we proposed to address the needs of law enforcement in one rule and the needs of emergency communications and public safety, national, and homeland security authorities in a separate rule. We are persuaded by the record that these rules should be combined, as the interests at issue are substantially similar.[117] We also agree that the rule should focus on the needs of ''law enforcement * * * authorities'' rather than the needs of ''law enforcement.'' The purpose of the safety and security provision is first to ensure that open Internet rules do not restrict broadband providers in addressing the needs of law enforcement authorities, and second to ensure that broadband providers do not use the safety and security provision without the imprimatur of a law enforcement authority, as a loophole to the rules. As such, application of the safety and security rule should be tied to invocation by relevant authorities rather than to a broadband provider's independent notion of law enforcement.

Some commenters urge us to limit the scope of the safety and security rule, or argue that it is unnecessary because other statutes give broadband providers the ability and responsibility to assist law enforcement. Several commenters urge the Commission to revise its proposal to clarify that broadband providers may not take any voluntary steps that would be inconsistent with open Internet principles, beyond those steps required by law. They argue, for example, that a broad exception for voluntary efforts could swallow open Internet rules by allowing broadband providers to cloak discriminatory practices under the guise of protecting safety and security.[118]

We agree with commenters that the safety and security rule should be tailored to avoid the possibility of broadband providers using their discretion to mask improper practices. But it would be a mistake to limit the rule to situations in which broadband providers have an obligation to assist safety and security personnel. For example, such a limitation would prevent broadband providers from implementing the Cellular Priority Access Service (also known as the Wireless Priority Service (WPS)), which allows for but does not legally require the prioritization of public safety communications on wireless networks. We do not think it necessary or advisable to provide for pre-deployment review by the Commission, particularly because time may be of the essence in meeting safety and security needs.[119]

2. Transfers of Unlawful Content and Unlawful Transfers of Content

In the *NPRM,* we proposed to treat as reasonable network management ''reasonable practices to * * * prevent the transfer of unlawful content; or * * * prevent the unlawful transfer of content.'' For reasons explained above we decline to include these practices within the scope of ''reasonable network management.'' However, we conclude that a clear statement that open Internet rules do not prohibit broadband providers from making reasonable efforts to address the transfer of unlawful content or unlawful transfers of content is helpful to ensure that open Internet rules are not used as a shield to enable unlawful activity or to deter prompt action against such activity. For example, open Internet rules should not be invoked to protect copyright infringement, which has adverse consequences for the economy, nor should they protect child pornography. We emphasize that open Internet rules do not alter copyright laws and are not intended to prohibit or discourage voluntary practices undertaken to address or mitigate the occurrence of copyright infringement.[120]

G. Specialized Services

In the *Open Internet NPRM,* the Commission recognized that broadband providers offer services that share capacity with broadband Internet access service over providers' last-mile facilities, and may develop and offer other such services in the future. These ''specialized services,'' such as some broadband providers' existing facilities-based VoIP and Internet Protocol-video offerings, differ from broadband Internet access service and may drive additional private investment in broadband networks and provide end users valued services, supplementing the benefits of the open Internet. At the same time, specialized services may raise concerns regarding bypassing open Internet protections, supplanting the open Internet, and enabling anticompetitive conduct. For example, open Internet protections may be weakened if broadband providers offer specialized services that are substantially similar to, but do not meet the definition of, broadband Internet access service, and if consumer protections do not apply to such services. In addition, broadband providers may constrict or fail to continue expanding network capacity allocated to broadband Internet access service to provide more capacity for specialized services. If this occurs, and particularly to the extent specialized services grow as substitutes for the delivery of content, applications, and services over broadband Internet access service, the Internet may wither as an open platform for competition, innovation, and free expression. These concerns may be exacerbated by consumers' limited choices for broadband providers, which may leave some end users unable to effectively exercise their preferences for broadband Internet access service (or content, applications, or services available through broadband Internet access service) over specialized services.

We agree with the many commenters who advocate that the Commission exercise its authority to closely monitor and proceed incrementally with respect to specialized services, rather than adopting policies specific to such services at this time. We will carefully observe market developments to verify that specialized services promote investment, innovation, competition, and end-user benefits without undermining or threatening the open Internet.[121] We note also that our rules

[117] *See* PIC Comments at 42–44. We intend the term ''national security authorities'' to include homeland security authorities.

[118] *See* EFF Comments at 20–22. EFF would require a pre-deployment waiver from the Commission if the needs of law enforcement would require broadband providers to act inconsistently with open Internet rules. *Id.* at 22.

[119] The National Emergency Number Association (NENA) would encourage or require network managers to provide public safety users with advance notice of changes in network management that could affect emergency services. *See* NENA Comments at 5–6. Although we do not adopt such a requirement, we encourage broadband providers to be mindful of the potential impact on emergency services when implementing network management policies, and to coordinate major changes with providers of emergency services when appropriate.

[120] *See, e.g.,* Stanford University—DMCA Complaint Resolution Center; User Generated Content Principles, *http://www.ugcprinciples.com* (cited in Letter from Linda Kinney, MPAA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09–191, 10–137, WC Docket No. 07–52 at 1 (filed Nov. 29, 2010)). Open Internet rules are not intended to affect the legal status of cooperative efforts by broadband Internet access service providers and other service providers that are designed to curtail infringement in response to information provided by rights holders in a manner that is timely, effective, and accommodates the legitimate interests of providers, rights holders, and end users.

[121] Our decision not to adopt rules regarding specialized services at this time involves an issue distinct from the regulatory classification of services such as VoIP and IPTV under the

Continued

define broadband Internet access service to encompass ''any service that the Commission finds to be providing a functional equivalent of [broadband Internet access service], or that is used to evade the protections set forth in these rules.'' [122]

We will closely monitor the robustness and affordability of broadband Internet access services, with a particular focus on any signs that specialized services are in any way retarding the growth of or constricting capacity available for broadband Internet access service. We fully expect that broadband providers will increase capacity offered for broadband Internet access service if they expand network capacity to accommodate specialized services. We would be concerned if capacity for broadband Internet access service did not keep pace. We also expect broadband providers to disclose information about specialized services' impact, if any, on last-mile capacity available for, and the performance of, broadband Internet access service. We may consider additional disclosure requirements in this area in our related proceeding regarding consumer transparency and disclosure. We would also be concerned by any marketing, advertising, or other messaging by broadband providers suggesting that one or more specialized services, taken alone or together, and not provided in accordance with our open Internet rules, is ''Internet'' service or a substitute for broadband Internet access service. Finally, we will monitor the potential for anticompetitive or otherwise harmful effects from specialized services, including from any arrangements a broadband provider may seek to enter into with third parties to offer such services. The Open Internet Advisory Committee will aid us in monitoring these issues.

IV. The Commission's Authority To Adopt Open Internet Rules

Congress created the Commission ''[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States * * * a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communication.'' Section 2 of the Communications Act grants the Commission jurisdiction over ''all interstate and foreign communication by wire or radio.'' As the Supreme Court explained in the radio context, Congress charged the Commission with ''regulating a field of enterprise the dominant characteristic of which was the rapid pace of its unfolding'' and therefore intended to give the Commission sufficiently ''broad'' authority to address new issues that arise with respect to ''fluid and dynamic'' communications technologies.[123] Broadband Internet access services are clearly within the Commission's subject matter jurisdiction and historically have been supervised by the Commission. Furthermore, as explained below, our adoption of basic rules of the road for broadband providers implements specific statutory mandates in the Communications Act and the Telecommunications Act of 1996.

Congress has demonstrated its awareness of the importance of the Internet and advanced services to modern interstate communications. In Section 230 of the Act, for example, Congress announced ''the policy of the United States'' concerning the Internet, which includes ''promot[ing] the continued development of the Internet'' and ''encourag[ing] the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet,'' while also ''preserv[ing] the vibrant and competitive free market that presently exists for the Internet and other interactive computer services'' and avoiding unnecessary regulation. Other statements of congressional policy further confirm the Commission's statutory authority. In Section 254 of the Act, for example, Congress charged the Commission with designing a Federal universal program that has as one of several objectives making ''[a]ccess to advanced telecommunications and information services'' available ''in all regions of the Nation,'' and particularly to schools, libraries, and health care providers. To the same end, in Section 706 of the 1996 Act, Congress instructed the Commission to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms)'' and, if it finds that advanced telecommunications capability is not being deployed to all Americans ''on a reasonable and timely basis,'' to ''take immediate action to accelerate deployment of such capability.'' This mandate provides the Commission both ''authority'' and ''discretion'' ''to settle on the best regulatory or deregulatory approach to broadband.'' As the legislative history of the 1996 Act confirms, Congress believed that the laws it drafted would compel the Commission to protect and promote the Internet, while allowing the agency sufficient flexibility to decide how to do so.[124] As explained in detail below, Congress did not limit its instructions to the Commission to one Section of the communications laws. Rather, it expressed its instructions in multiple Sections which, viewed as a whole, provide broad authority to promote competition, investment, transparency, and an open Internet through the rules we adopt in this Order.

A. Section 706 of the 1996 Act Provides Authority for the Open Internet Rules

As noted, Section 706 of the 1996 Act directs the Commission (along with state commissions) to take actions that encourage the deployment of ''advanced telecommunications capability.'' ''[A]dvanced telecommunications capability,'' as defined in the statute, includes broadband Internet access.[125]

Communications Act, a subject we do not address in this Order. Likewise, the Commission's actions here do not affect any existing obligation to provide interconnection, unbundled network elements, or special access or other wholesale access under Sections 201, 251, 256, and 271 of the Act. 47 U.S.C. 201, 251, 256, 271.

[122] Some commenters, including Internet engineering experts and analysts, emphasize the importance of distinguishing between the open Internet and specialized services and state that ''this distinction must continue as a most appropriate and constructive basis for pursuing your policy goals.'' Various Advocates for the Open Internet PN Reply at 3; *see also id.* at 2.

[123] *Nat'l Broad. Co., Inc.* v. *United States,* 319 U.S. 190, 219–20 (1943) (Congress did not ''attempt[] an itemized catalogue of the specific manifestations of the general problems'' that it entrusted to the Commission); *see also FCC* v. *Pottsville Broad. Co.,* 309 U.S. 134, 137, 138 (1940) (the Commission's statutory responsibilities and authority amount to ''a unified and comprehensive regulatory system'' for the communications industry that allows a single agency to ''maintain, through appropriate administrative control, a grip on the dynamic aspects'' of that ever-changing industry).

[124] S. Rep. No. 104–23, at 51 (1995) (''The goal is to accelerate deployment of an advanced capability that will enable subscribers in all parts of the United States to send and receive information in all its forms—voice, data, graphics, and video—over a high-speed switched, interactive, broadband, transmission capability.'').

[125] 47 U.S.C. 1302(d)(1) (defining ''advanced telecommunications capability'' as ''high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology''). *See National Broadband Plan for our Future,* Notice of Inquiry, 24 FCC Rcd 4342, 4309, App. para. 13 (2009) (''advanced telecommunications capability'' includes broadband Internet access); *Inquiry Concerning the Deployment of Advanced Telecomms. Capability to All Americans in a*

Under Section 706(a), the Commission must encourage the deployment of such capability by ''utilizing, in a manner consistent with the public interest, convenience, and necessity,'' various tools including ''measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.'' For the reasons stated in Parts II.A, II.D and III.B, above, our open Internet rules will have precisely that effect.

In *Comcast,* the DC Circuit identified Section 706(a) as a provision that ''at least arguably * * * delegate[s] regulatory authority to the Commission,'' and in fact ''contain[s] a direct mandate—the Commission 'shall encourage.' '' [126] The court, however, regarded the Commission as ''bound by'' a prior order that, in the court of appeals' understanding, had held that Section 706(a) is not a grant of authority. In the *Advanced Services Order,* to which the court referred, the Commission held that Section 706(a) did not permit it to encourage advanced services deployment through the mechanism of forbearance without complying with the specific requirements for forbearance set forth in Section 10 of the Communications Act. The issue presented in the 1998 proceeding was whether the Commission could rely on the broad terms of Section 706(a) to trump those specific requirements. In the *Advanced Services Order,* the Commission ruled that it could not do so, noting that it would be ''unreasonable'' to conclude that Congress intended Section 706(a) to ''allow the Commission to eviscerate [specified] forbearance exclusions after having expressly singled out [those exclusions] for different treatment in Section 10.'' The Commission accordingly concluded that Section 706(a) did not give it independent authority—in other words, authority over and above what it otherwise possessed [127]—to forbear from applying other provisions of the Act. The Commission's holding thus honored the interpretive canon that ''[a] specific provision * * * controls one[ ] of more general application.''

While disavowing a reading of Section 706(a) that would allow the agency to trump specific mandates of the Communications Act, the Commission nonetheless affirmed in the *Advanced Services Order* that Section 706(a) ''gives this Commission an affirmative obligation to encourage the deployment of advanced services'' using its existing rulemaking, forbearance and adjudicatory powers, and stressed that ''this obligation has substance.'' The *Advanced Services Order* is, therefore, consistent with our present understanding that Section 706(a) authorizes the Commission (along with state commissions) to take actions, within their subject matter jurisdiction and not inconsistent with other provisions of law, that encourage the deployment of advanced telecommunications capability by any of the means listed in the provision.[128]

In directing the Commission to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans * * * by utilizing * * * price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment,'' Congress necessarily invested the Commission with the statutory authority to carry out those acts. Indeed, the relevant Senate Report explained that the provisions of Section 706 are ''intended to ensure that one of the primary objectives of the [1996 Act]—to accelerate deployment of advanced telecommunications capability—is achieved,'' and stressed that these provisions are ''a necessary fail-safe'' to guarantee that Congress's objective is reached. It would be odd indeed to characterize Section 706(a) as a ''fail-safe'' that ''ensures'' the Commission's ability to promote advanced services if it conferred no actual authority. Here, under our reading, Section 706(a) authorizes the Commission to address practices, such as blocking VoIP communications, degrading or raising the cost of online video, or denying end users material information about their broadband service, that have the potential to stifle overall investment in Internet infrastructure and limit competition in telecommunications markets.

This reading of Section 706(a) obviates the concern of some commenters that our jurisdiction under the provision could be ''limitless'' or ''unbounded.'' To the contrary, our Section 706(a) authority is limited in three critical respects. First, our mandate under Section 706(a) must be read consistently with Sections 1 and 2 of the Act, which define the Commission's subject matter jurisdiction over ''interstate and foreign commerce in communication by wire and radio.'' [129] As a result, our authority under Section 706(a) does not, in our view, extend beyond our subject matter jurisdiction under the Communications Act. Second, the Commission's actions

Reasonable and Timely Fashion, 14 FCC Rcd 2398, 2400, para. 1 (Section 706 addresses ''the deployment of broadband capability''), 2406 para. 20 (same). Even when broadband Internet access is provided as an ''information service'' rather than a ''telecommunications service,'' *see Nat'l Cable & Telecomm. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 977–78 (2005), it involves ''telecommunications.'' 47 U.S.C. 153(24). Given Section 706's explicit focus on deployment of broadband access to voice, data, and video communications, it is not important that the statute does not use the exact phrase ''Internet network management.''

[126] *See Comcast,* 600 F.3d at 658; *see also* 47 U.S.C. 1302(a) (''The Commission * * * shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans * * * by utilizing * * * price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.''). Because Section 706 contains a ''direct mandate,'' we reject the argument pressed by some commenters (*see, e.g.,* AT&T Comments at 217–18; Verizon Comments at 100–01; Qwest Comments at 58–59; Letter from Rick Chessen, Senior Vice President, Law and Regulatory Policy, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09–191 & 10–127, WC Docket No. 07–52, at 7 (filed Dec. 10, 2010) (NCTA Dec. 10, 2010 *Ex Parte* Letter)) that Section 706 confers no substantive authority.

[127] Consistent with longstanding Supreme Court precedent, we have understood this authority to include our ancillary jurisdiction to further congressional policy. *See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry),* Final Decision, 77 FCC 2d 384, 474 (1980), *aff'd, Computer & Commc'ns Indus. Ass'n.* v. *FCC,* 693 F.2d 198, 211–14 (DC Cir. 1982) (*CCIA*).

[128] To the extent the *Advanced Services Order* can be construed as having read Section 706(a) differently, we reject that reading of the statute for the reasons discussed in the text.

[129] 47 U.S.C. 151, 152. The Commission historically has recognized that services carrying Internet traffic are jurisdictionally mixed, but generally subject to Federal regulation. *See, e.g., Nat'l Ass'n of Regulatory Util. Comm'rs Petition for Clarification or Declaratory Ruling that No FCC Order or Rule Limits State Authority to Collect Broadband Data,* Memorandum Opinion and Order, 25 FCC Rcd 5051, 5054, paras. 8–9 & n. 24 (2010). Where, as here, ''it is not possible to separate the interstate and intrastate aspects of the service,'' the Commission may preempt state regulation where ''Federal regulation is necessary to further a valid Federal regulatory objective, *i.e.,* state regulation would conflict with Federal regulatory policies.'' *Minn. Pub. Utils. Comm'n* v. *FCC,* 483 F.3d 570, 578 (8th Cir. 2007); *see also La. Pub. Serv. Comm'n* v. *FCC,* 476 U.S. 355, 375 n. 4 (1986). Except to the extent a state requirement conflicts on its face with a Commission decision herein, the Commission will evaluate preemption in light of the fact-specific nature of the relevant inquiry, on a case-by-case basis. We recognize, for example, that states play a vital role in protecting end users from fraud, enforcing fair business practices, and responding to consumer inquiries and complaints. *See, e.g., Vonage Order,* 19 FCC Rcd at 22404–05, para. 1. We have no intention of impairing states' or local governments' ability to carry out these duties unless we find that specific measures conflict with Federal law or policy. In determining whether state or local regulations frustrate Federal policies, we will, among other things, be guided by the overarching congressional policies described in Section 230 of the Act and Section 706 of the 1996 Act. 47 U.S.C. 230, 1302.

under Section 706(a) must ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.'' Third, the activity undertaken to encourage such deployment must ''utilize[e], in a manner consistent with the public interest, convenience, and necessity,'' one (or more) of various specified methods. These include: ''price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.'' Actions that do not fall within those categories are not authorized by Section 706(a). Thus, as the DC Circuit has noted, while the statutory authority granted by Section 706(a) is broad, it is ''not unfettered.'' [130]

Section 706(a) accordingly provides the Commission a specific delegation of legislative authority to promote the deployment of advanced services, including by means of the open Internet rules adopted in this Order. Our understanding of Section 706(a) is, moreover, harmonious with other statutory provisions that confer a broad mandate on the Commission. Section 706(a)'s directive to ''encourage the deployment [of advanced telecommunications capability] on a reasonable and timely basis'' using the methods specified in the statute is, for example, no broader than other provisions of the Commission's authorizing statutes that command the agency to ensure ''just'' and ''reasonable'' rates and practices, or to regulate services in the ''public interest.'' Indeed, our authority under Section 706(a) is generally consistent with—albeit narrower than—the understanding of ancillary jurisdiction under which this Commission operated for decades before the *Comcast* decision.[131] The similarities between the two in fact explain why the Commission has not heretofore had occasion to describe Section 706(a) in this way: In the particular proceedings prior to *Comcast,* setting out the understanding of Section 706(a) that we articulate in this Order would not meaningfully have increased the authority that we understood the Commission already to possess.[132]

Section 706(b) of the 1996 Act provides additional authority to take actions such as enforcing open Internet principles. It directs the Commission to undertake annual inquiries concerning the availability of advanced telecommunications capability to all Americans and requires that, if the Commission finds that such capability is not being deployed in a reasonable and timely fashion, it ''*shall take immediate action* to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.'' In July 2010, the Commission ''conclude[d] that broadband deployment to *all* Americans is not reasonable and timely'' and noted that ''[a]s a consequence of that conclusion,'' Section 706(b) was triggered. Section 706(b) therefore provides express authority for the pro-investment, pro-competition rules we adopt in this Order.

B. Authority To Promote Competition and Investment in, and Protect End Users of, Voice, Video, and Audio Services

The Commission also has authority under the Communications Act to adopt the open Internet rules in order to promote competition and investment in voice, video, and audio services. Furthermore, for the reasons stated in Part II, above, even if statutory provisions related to voice, video, and audio communications were the *only* sources of authority for the open Internet rules (which is not the case), it would not be sound policy to attempt to implement rules concerning only voice, video, or audio transmissions over the Internet.[133]

1. The Commission Has Authority To Adopt Open Internet Rules To Further Its Responsibilities Under Title II of the Act

Section 201 of the Act delegates to the Commission ''express and expansive authority'' to ensure that the ''charges [and] practices * * * in connection with'' telecommunications services are ''just and reasonable.'' As described in Part II.B, interconnected VoIP services, which include some over-the-top VoIP services, ''are increasingly being used as a substitute for traditional telephone service.''[134] Over-the-top services therefore do, or will, contribute to the marketplace discipline of voice telecommunications services regulated under Section 201.[135] Furthermore,

[130] *Ad Hoc Telecomms. Users Comm.,* 572 F.3d at 906–07 (''The general and generous phrasing of sec. 706 means that the FCC possesses significant albeit not unfettered, authority and discretion to settle on the best regulatory or deregulatory approach to broadband.'').

[131] In *Comcast,* the court stated that '' '[t]he Commission * * * may exercise ancillary jurisdiction only when two conditions are satisfied: (1) The Commission's general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.' '' 600 F.3d at 646 (quoting *Am. Library Ass'n* v. *FCC,* 406 F.3d 689, 691–92 (DC Cir. 2005)) (alterations in original). The court further ruled that the second prong of this test requires the Commission to rely on specific delegations of statutory authority. 600 F.3d at 644, 654.

[132] Ignoring that Section 706(a) expressly contemplates the use of ''regulating methods'' such as price regulation, some commenters read prior Commission orders as suggesting that Section 706 authorizes only deregulatory actions. *See* AT&T Comments at 216 (citing *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecomm. Nor A Telecomms. Serv.,* Memorandum Opinion and Order, 19 FCC Rcd 3307, 3319, para. 19 n. 69 (2004) (*Pulver Order*)); Esbin Comments at 52 (citing *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities et al.,* Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4801, 4826, 4840, paras. 4, 47, 73, (2002) (*Cable Modem Declaratory Ruling*) and *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.,* Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14894 para. 77 (2005) (*Wireline Broadband Report and Order*)). They are mistaken. The *Pulver Order* stated only that Section 706 did not contemplate the application of ''economic and entry/exit regulation *inherent in Title II''* to information service Internet applications. *Pulver Order,* 19 FCC Rcd at 3379, para. 19 n. 69 (emphasis added). The open Internet rules that we adopt in this Order do not regulate Internet applications, much less impose Title II (*i.e.,* common carrier) regulation on such applications. Moreover, at the same time the Commission determined in the *Cable Modem Declaratory Ruling* and the *Wireline Broadband Report and Order* that cable modem service and wireline broadband services (such as DSL) could be provided as information services not subject to Title II, it proposed new regulations under other sources of authority including Section 706. *See Cable Modem Declaratory Ruling,* 17 FCC Rcd at 4840, para. 73; *Wireline Broadband Report and Order,* 20 FCC Rcd at 14929–30, 14987, para. 146. On the same day the Commission adopted the *Wireline Broadband Report and Order,* it also adopted the *Internet Policy Statement,* which rested in part on Section 706. 20 FCC Rcd 14986, para. 2 (2005). Our prior orders therefore do not construe Section 706 as exclusively deregulatory. And to the extent that any prior order does suggest such a construction, we now reject it. *See Ad Hoc Telecomms. Users Comm.,* 572 F.3d at 908 (Section 706 ''direct[s] the FCC to make the major policy decisions and to select *the mix of regulatory and deregulatory tools* the Commission deems most appropriate in the public interest to facilitate broadband deployment and competition'') (emphasis added).

[133] Many broadband providers offer their service on a common carriage basis under Title II of the Act. *See Framework for Broadband Internet Serv.,* Notice of Inquiry, 25 FCC Rcd 7866, 7875, para. 21 (2010). With respect to these providers, the rules we adopt in this Order are additionally supported on that basis. With the possible exception of transparency requirements, however, the open Internet rules are unlikely to create substantial new duties for these providers in practice.

[134] *Tel. No. Requirements for IP–Enabled Servs. Providers,* Report and Order, Declaratory Ruling, Order on Remand, and NPRM, 22 FCC Rcd 19531, 19547, para. 28 (2007). By definition, interconnected VoIP services allow calls to and from traditional phone networks.

[135] *See* NCTA Dec. 10, 2010 *Ex Parte* Letter (arguing that the Commission could exercise authority ancillary to several provisions of Title II of the Act, including Sections 201 and 202, ''to ensure that common carrier services continue to be

companies that provide both voice communications and broadband Internet access services (for example, telephone companies that are broadband providers) have the incentive and ability to block, degrade, or otherwise disadvantage the services of their online voice competitors. Because the Commission may enlist market forces to fulfill its Section 201 responsibilities, we possess authority to prevent these anticompetitive practices through open Internet rules.[136]

Section 251(a)(1) of the Act imposes a duty on all telecommunications carriers ''to interconnect directly or indirectly with the facilities of other telecommunications carriers.'' Many over-the-top VoIP services allow end users to receive calls from and/or place calls to traditional phone networks operated by telecommunications carriers. The Commission has not determined whether any such VoIP providers are telecommunications carriers. To the extent that VoIP services are information services (rather than telecommunications services), any blocking or degrading of a call from a traditional telephone customer to a customer of a VoIP provider, or vice-versa, would deny the traditional telephone customer the intended benefits of telecommunications interconnection under Section 251(a)(1). Over-the-top VoIP customers account for a growing share of telephone usage. If calls to and from these VoIP customers were not delivered efficiently and reliably by broadband providers, all users of the public switched telephone network would be limited in their ability to communicate, and Congress's goal of ''efficient, Nation-wide, and world-wide'' communications across interconnected networks would be frustrated. To the extent that VoIP services are telecommunications services, a broadband provider's interference with traffic exchanged between a provider of VoIP telecommunications services and another telecommunications carrier would interfere with interconnection between two telecommunications carriers under Section 251(a)(1).[137]

2. The Commission Has Authority To Adopt Open Internet Rules To Further Its Responsibilities Under Titles III and VI of the Act

''The Commission has been charged with broad responsibilities for the orderly development of an appropriate system of local television broadcasting,''[138] which arise from the Commission's more general public interest obligation to ''ensure the larger and more effective use of radio.''[139] Similarly, the Commission has broad jurisdiction to oversee MVPD services, including direct-broadcast satellite (DBS).[140] Consistent with these mandates, our jurisdiction over video and audio services under Titles III and VI of the Communications Act provides additional authority for open Internet rules.

First, such rules are necessary to the effective performance of our Title III responsibilities to ensure the ''orderly development * * * of local television broadcasting''[141] and the ''more effective use of radio.''[142] As discussed in Parts II.A and II.B, Internet video distribution is increasingly important to all video programming services, including local television broadcast service. Radio stations also are providing audio and video content on the Internet. At the same time,

offered on just and reasonable terms and conditions'' and to ''facilitate consumer access to broadband-based alternatives to common carrier services such as Voice over Internet Protocol''); Vonage Comments at 11–12 (''The Commission's proposed regulations would help preserve the competitive balance between providers electing to operate under Title II and those operating under Title I.''); Google Comments at 45–46 (''The widespread use of VoIP and related services as cheaper and more feature-rich alternatives to Title II services has significant effects on traditional telephone providers' practices and pricing, as well [as] on network interconnection between Title II and IP networks that consumers use to reach each other, going to the heart of the Commission's Title II responsibilities.'') (footnotes and citations omitted); Letter from Devendra T. Kumar, Counsel to Skype Communications S.A.R.L., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09–191, WC Docket No. 07–52 (filed Nov. 30, 2010) (arguing that the Commission has authority ancillary to Section 201 to protect international VoIP calling); XO Comments at 20 (noting the impact of, *inter alia,* VoIP on the Commission's ''traditional framework'' for regulating voice services under Title II); Letter from Alan Inouye *et al.,* on behalf of ALA, ARL and EDUCAUSE, to Chairman Julius Genachowski *et al.,* GN Docket No. 09–191, WC Docket No. 07–52 at 4–5 (filed Dec. 13, 2010) (citing examples of how libraries and higher education institutions are using broadband services, including VoIP, to replace traditional common carrier services). In previous orders, the Commission has embraced the use of VoIP to avoid or constrain high international calling rates. *See Universal Serv. Contribution Methodology et al.,* Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7546, para. 55 & n.187 (2006) (''[I]nterconnected VoIP service is often marketed as an economical way to make interstate and international calls, as a lower-cost substitute for wireline toll service.''), *rev'd in part sub nom. Vonage Holdings Corp.* v. *FCC,* 489 F.3d 1232 (DC Cir. 2007); *Reporting Requirements for U.S. Providers of Int'l Telecomms. Servs.,* Notice of Proposed Rulemaking, 19 FCC Rcd 6460, 6470, para. 22 (2004) (''Improvements in the packet-switched transmission technology underlying the Internet now allow providers of VoIP to offer international voice transmission of reasonable quality at a price lower than current IMTS rates.'') (footnote omitted); *Int'l Settlements Policy Reform,* Notice of Proposed Rulemaking, 17 FCC Rcd 19954, 19964, para. 13 (2002) (''This ability to engage in least-cost routing, as well as alternative, non-traditional services such as IP Telephony or Voice-Over-IP, in conjunction with the benchmarks policy have created a market dynamic that is pressuring international settlement rates downward.''). In addition, NCTA has explained that, ''[b]y enabling consumers to make informed choices regarding broadband Internet access service,'' the Commission could conclude that transparency requirements ''would help promote the competitiveness of VoIP and other broadband-based communications services'' and ''thereby facilitate the operation of market forces to discipline the charges and other practices of common carriers, in fulfillment of the Commission's obligations under Sections 201 and 202'' of the Act. NCTA Dec. 10, 2010 *Ex Parte* Letter at 2–3.

[136] We reject the argument asserted by some commenters (*see, e.g.,* AT&T Comments at 218–19; Verizon Comments at 98–99) that the various grants of rulemaking authority in the Act, including the express grant of rulemaking authority in Section 201(b) itself, do not authorize the promulgation of rules pursuant to Section 201(b). *See AT&T Corp.* v. *Iowa Utils. Bd.,* 525 U.S. 366, 378 (1999) (''We think that the grant in sec. 201(b) means what it says: The FCC has rulemaking authority to carry out the 'provisions of this Act.' '').

[137] *See also* 47 U.S.C. 256(b)(1) (directing the Commission to ''establish procedures for * * * oversight of coordinated network planning by telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service''); *Comcast,* 600 F.3d at 659 (acknowledging Section 256's objective, while adding that Section 256 does not '' 'expand[ ] * * * any authority that the Commission' otherwise has under law'') (quoting 47 U.S.C. 256(c)).

[138] *See United States* v. *Sw. Cable Co.,* 392 U.S. 157, 177 (1968); *see also id.* at 174 (''[T]hese obligations require for their satisfaction the creation of a system of local broadcasting stations, such that 'all communities of appreciable size (will) have at least one television station as an outlet for local self-expression.' ''); 47 U.S.C. 307(b) (Commission shall ''make such distribution of licenses, * * * among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same''), 303(f) & (h) (authorizing the Commission to allocate broadcasting zones or areas and to promulgate regulations ''as it may deem necessary'' to prevent interference among stations) (cited in *Sw. Cable,* 392 U.S. at 173–74).

[139] *Nat'l Broad. Co.,* 319 U.S. at 216 (public interest to be served is the ''larger and more effective use of radio'') (citation and internal quotation marks omitted).

[140] *See* 47 U.S.C. 303(v); *see also N.Y. State Comm'n on Cable Television* v. *FCC,* 749 F.2d 804, 807–12 (DC Cir. 1984) (upholding the Commission's exercise of ancillary authority over satellite master antenna television service); 47 U.S.C. 548 (discussed below).

[141] *Sw. Cable,* 392 U.S. at 177; *see* 47 U.S.C. 303(f) & (h) (establishing Commission's authority to allocate broadcasting zones or areas and to promulgate regulations ''as it may deem necessary'' to prevent interference among stations) (cited in *Sw. Cable,* 392 U.S. at 173–74).

[142] *Nat'l Broad. Co.,* 319 U.S. at 216; *see also* 47 U.S.C. 303(g) (establishing Commission's duty to ''generally encourage the larger and more effective use of radio in the public interest''), 307(b) (''[T]he Commission shall make such distribution of licenses * * * among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.'').

broadband providers—many of which are also MVPDs—have the incentive and ability to engage in self-interested practices that may include blocking or degrading the quality of online programming content, including broadcast content, or charging unreasonable additional fees for faster delivery of such content. Absent the rules we adopt in this Order, such practices jeopardize broadcasters' ability to offer news (including local news) and other programming over the Internet, and, in turn, threaten to impair their ability to offer high-quality broadcast content.[143]

The Commission likewise has authority under Title VI of the Act to adopt open Internet rules that protect competition in the provision of MVPD services. A cable or telephone company's interference with the online transmission of programming by DBS operators or stand-alone online video programming aggregators that may function as competitive alternatives to traditional MVPDs[144] would frustrate Congress's stated goals in enacting Section 628 of the Act, which include promoting ''competition and diversity in the multichannel video programming market''; ''increase[ing] the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming''; and ''spur[ring] the development of communications technologies.''[145]

When Congress enacted Section 628 in 1992, it was specifically concerned about the incentive and ability of cable operators to use their control of video programming to impede competition from the then-nascent DBS industry.[146] Since that time, the Internet has opened a new competitive arena in which MVPDs that offer broadband service have the opportunity and incentive to impede DBS providers and other competing MVPDs—and the statute reaches this analogous arena as well. Section 628(b) prohibits cable operators from engaging in ''unfair or deceptive acts or practices the purpose or effect of which is to prevent or hinder significantly the ability of an MVPD to deliver satellite cable programming or satellite broadcast programming to consumers.'' An ''unfair method of competition or unfair act or practice'' under Section 628(b) includes acts that can be anticompetitive.[147] Thus, Section 628(b) proscribes practices by cable operators that (i) can impede competition, and (ii) have the purpose or effect of preventing or significantly hindering other MVPDs from providing consumers their satellite-delivered programming (*i.e.,* programming transmitted to MVPDs via satellite for retransmission to subscribers).[148] Section 628(c)(1), in turn, directs the Commission to adopt rules proscribing unfair practices by cable operators and their affiliated satellite cable programming vendors. Section 628(j) provides that telephone companies offering video programming services are subject to the same rules as cable operators.

The open Internet rules directly further our mandate under Section 628. Cable operators, telephone companies, and DBS operators alike are seeking to keep and win customers by expanding their MVPD offerings to include online access to their programming.[149] For example, in providing its MVPD service, DISH (one of the nation's two DBS providers) relies significantly on online dissemination of programming, including video-on-demand and other programming, that competes with similar offerings by cable operators.[150]

[143] NCTA has noted that ''[t]he Commission could decide that, based on the growing importance of broadcast programming distributed over broadband networks to both television viewers and the business of broadcasting itself, ensuring that broadcast video content made available over broadband networks is not subject to unreasonable discrimination or anticompetitive treatment is necessary to preserve and strengthen the system of local broadcasting.'' NCTA Dec. 10, 2010 *Ex Parte* Letter at 3; *see also id.* (''Facilitating the availability of broadcast content on the Internet may also help to foster more efficient and intensive use of spectrum, thereby supporting the Commission's duty in Section 303(g) to 'generally encourage the larger and more effective use of radio in the public interest.' '') (quoting 47 U.S.C. 303(g)).

[144] The issue whether online-only video programming aggregators are themselves MVPDs under the Communications Act and our regulations has been raised in pending program access complaint proceedings. *See, e.g., VDC Corp.* v. *Turner Network Sales, Inc.,* Program Access Complaint (Jan. 18, 2007); *Sky Angel U.S., LLC* v. *Discovery Commc'ns LLC,* Program Access Complaint (Mar. 24, 2010). Nothing in this Order should be read to state or imply any determination on this issue.

[145] 47 U.S.C. sec. 548(a). The Act defines ''video programming'' as ''programming provided by, or generally considered comparable to programming provided by, a television broadcast station.'' 47 U.S.C. sec. 522(20). Although the Commission stated nearly a decade ago that video '' 'streamed' over the Internet'' had ''not yet achieved television quality'' and therefore did not constitute ''video programming'' at that time, *see Cable Modem Declaratory Ruling,* 17 FCC Rcd at 4834, para. 63 n.236, intervening improvements in streaming technology and broadband availability enable such programming to be ''comparable to programming provided by * * * a television broadcast station,'' 47 U.S.C. sec. 522(20). This finding is consistent with our prediction more than five years ago that ''[a]s video compression technology improves, data transfer rates increase, and media adapters that link TV to a broadband connection become more widely used, * * * video over the Internet will proliferate and improve in quality.'' *Ann. Assessment of the Status of Competition in the Mkt. for the Delivery of Video Programming,* Notice of Inquiry, 19 FCC Rcd 10909, 10932, para. 74 (2004) (citation omitted).

[146] *See* Cable Act of 1992, Public Law 102–385, sec. 2(a)(5), 106 Stat. 1460, 1461 (''Vertically integrated program suppliers * * * have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies.''); H.R. Rep. No. 102–862, at 93 (1992) (Conf. Rep.), *reprinted in* 1992 U.S.C.C.A.N. 1231, 1275 (''In adopting rules under this section, the conferees expect the Commission to address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging discriminatory prices to non-cable technologies.''); S. Rep. No. 102–92, at 26 (1991), *reprinted in* 1992 U.S.C.C.A.N. 1133, 1159 (''[C]able programmers may simply refuse to sell to potential competitors. Small cable operators, satellite dish owners, and wireless cable operators complain that they are denied access to, or charged more for, programming than large, vertically integrated cable operators.'').

[147] *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements,* First Report and Order, 25 FCC Rcd 746, 779, para. 48 & n. 190 (2010) (citing *Exclusive Contracts for Provision of Video Serv. in Multiple Dwelling Units and Other Real Estate Devs.,* Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, 20255, para. 43, *aff'd, NCTA,* 567 F.3d 659); *see also NTCA,* 567 F.3d at 664–65 (referring to ''unfair dealing'' and ''anticompetitive practices'').

[148] *See* 47 U.S.C. 548(b); *NCTA,* 567 F.3d at 664. In *NCTA,* the court held that the Commission reasonably concluded that the ''broad and sweeping terms'' of Section 628(b) authorized it to ban exclusive agreements between cable operators and building owners that prevented other MVPDs from providing their programming to residents of those buildings. The court observed that ''the words Congress chose [in Section 628(b)] focus not on practices that prevent MVPDs from *obtaining* satellite cable or satellite broadcast programming, but on practices that prevent them from 'providing' that programming 'to subscribers or consumers.' '' *NCTA,* 567 F.3d at 664 (emphasis in original).

[149] DISH Reply at 4–5 (''Pay-TV services continue to evolve at a rapid pace and providers increasingly are integrating their vast offerings of linear channels with online content,'' while ''consumers are adopting online video services as a complement to traditional, linear pay-TV services'' and ''specifically desire Internet video as a complement to * * * [MVPDs'] traditional TV offerings.'') (footnotes and citations omitted). We find unpersuasive the contention that this Order fails to ''grapple with the implications of the market forces that are driving MVPDs * * * to add Internet connectivity to their multichannel video offerings.'' McDowell Statement at *24 (footnote omitted). Our analysis takes account of these developments, which are discussed at length in Part II.A, above.

[150] *Id.* at 5–8 & n. 20 (discussing ''DishOnline service,'' which ''allows DISH to offer over 3,000 movies and TV shows through its 'DishOnline' Internet video service,'' and noting that ''the success of DishOnline is critically dependent on broadband access provided and controlled by DISH's competitors in the MVPD market''); DISH PN Comments at 2–3; DISH Network, Watch Live TV Online OR Recorded Programs with DishOnline, *http://www.dish-systems.com/products/dish_online.php* (' 'DISHOnline.com integrates DISH Network's expansive TV programming lineup with the vast amount of online video content, adding another dimension to our 'pay once, take your TV everywhere' product platform.' '). Much of the regular subscription programming that DISH offers online is satellite-delivered programming. *See* DISH Network, Watch Live TV Online OR Recorded

As DISH explains, ''[a]s more and more video consumption moves online, the competitive viability of stand-alone MVPDs depends on their ability to offer an online video experience of the same quality as the online video offerings of integrated broadband providers.'' The open Internet rules will prevent practices by cable operators and telephone companies, in their role as broadband providers, that have the purpose or effect of significantly hindering (or altogether preventing) delivery of video programming protected under Section 628(b).[151] The Commission therefore is authorized to adopt open Internet rules under Section 628(b), (c)(1), and (j).[152]

Similarly, open Internet rules enable us to carry out our responsibilities under Section 616(a) of the Act, which confers additional express statutory authority to combat discriminatory network management practices by broadband providers. Section 616(a) directs the Commission to adopt regulations governing program carriage agreements ''and related practices'' between cable operators or other MVPDs and video programming vendors.[153] The program carriage regulations must include provisions that prevent MVPDs from ''unreasonably restrain[ing] the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution,'' on the basis of a vendor's affiliation or lack of affiliation with the MVPD, in the selection, terms, or conditions of carriage of the vendor's programming.[154] MVPD practices that discriminatorily impede competing video programming vendors' online delivery of programming to consumers affect the vendors' ability to ''compete fairly'' for viewers, just as surely as MVPDs' discriminatory selection of video programming for carriage on cable systems has this effect. We find that discriminatory practices by MVPDs in their capacity as broadband providers, such as blocking or charging fees for termination of online video programming to end users, are ''related'' to program carriage agreements and within our mandate to adopt regulations under Section 616(a).[155]

C. Authority To Protect the Public Interest Through Spectrum Licensing

Open Internet rules for wireless services are further supported by our authority, under Title III of the Communications Act, to protect the public interest through spectrum licensing. Congress has entrusted the Commission with ''maintain[ing] the control of the United States over all the channels of radio transmission.'' Licensees hold Commission-granted authorizations to use that spectrum subject to conditions the Commission imposes on that use.[156] In considering whether to grant a license to use spectrum, therefore, the Commission must ''determine * * * whether the public interest, convenience, and necessity will be served by the granting of such application.'' [157] Likewise, when identifying classes of licenses to be awarded by auction and the characteristics of those licenses, the Commission ''shall include safeguards to protect the public interest'' and must seek to promote a number of goals, including ''the development and rapid deployment of new technologies, products, and services.'' Even after licenses are awarded, the Commission may change the license terms ''if in the judgment of the Commission such action will promote the public interest, convenience, and necessity.'' The Commission may exercise this authority on a license-by-license basis or through a rulemaking, even if the affected licenses were awarded at auction.

The Commission previously has required wireless licensees to comply with open Internet principles, as appropriate in the particular situation before it. In 2007, when it modified the service rules for the 700 MHz band, the Commission took ''a measured step to encourage additional innovation and consumer choice at this critical stage in the evolution of wireless broadband services.'' Specifically, the Commission required C block licensees ''to allow customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choosing in C Block networks, so long as they meet all applicable regulatory requirements and comply with reasonable conditions related to management of the wireless network (*i.e.,* do not cause harm to the network).'' The open Internet conditions we adopt in this Order likewise are necessary to advance the public interest in innovation and investment.[158]

AT&T contends that the Commission cannot apply ''neutrality'' regulations to wireless broadband services outside the upper 700 MHz C Block spectrum because any such regulations ''would unlawfully rescind critical rulings in the Commission's *700 MHz Second Report and Order* on which providers relied in making multi-billion dollar investments,'' [159] and that adopting these regulations more broadly to all mobile providers would violate the Administrative Procedure Act. We disagree. As explained above, the Commission retains the statutory authority to impose new requirements on existing licenses beyond those that were in place at the time of grant, whether the licenses were assigned by

Programs with DishOnline, *http://www.dish-systems.com/products/dish_online.php* (noting that customers can watch content from cable programmers such as the Discovery Channel and MTV). Thus, we reject NCTA's argument that ''[t]here is no basis for asserting that any cable operator or common carrier's practices with respect to Internet-delivered video could * * * 'prevent or significantly hinder' an MVPD from providing satellite cable programming.'' NCTA Dec. 10, 2010 *Ex Parte* Letter at 5.

[151] Notwithstanding suggestions to the contrary, the Commission is not required to wait until anticompetitive harms are realized before acting. Rather, the Commission may exercise its ancillary jurisdiction to ''plan in advance of foreseeable events, instead of waiting to react to them.'' *Sw. Cable,* 392 U.S. at 176–77 (citation and internal quotation marks omitted); *see also Star Wireless, LLC* v. *FCC,* 522 F.3d at 475.

[152] *See Open Internet NRPM,* 24 FCC Rcd at 13099, para. 85 (discussing role of the Internet in fostering video programming competition and the Commission's authority to regulate video services).

[153] An MVPD is ''a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.'' 47 U.S.C. 522(13). A ''video programming vendor'' is any ''person engaged in the production, creation, or wholesale distribution of video programming for sale.'' 47 U.S.C. 536(b). A number of video programming vendors make their programming available online. *See, e.g.,* Hulu.com, *http://www.hulu.com/about*; Biography Channel, *http://www.biography.com;* Hallmark Channel, *http://www.hallmarkchannel.com.*

[154] 47 U.S.C. 536(a)(1)–(3); *see also* 47 CFR 76.1301 (implementing regulations to address practices specified in Section 616(a)(1)–(3)).

[155] The Act does not define ''related practices'' as that phrase is used in Section 616(a). Because the term is neither explicitly defined in the statute nor susceptible of only one meaning, we construe it, consistent with dictionary definitions, to cover practices that are ''akin'' or ''connected'' to those specifically identified in Section 616(a)(1)–(3). *See Black's Law Dictionary* 1158 (5th ed. 1979); *Webster's Third New Int'l Dictionary* 1916 (1993). The argument that Section 616(a) has no application to Internet access service overlooks that the statute expressly covers these ''related practices.''

[156] 47 U.S.C. 304, 316(a)(1). We thus disagree with commenters who suggest in general that there is nothing in Title III to support the imposition of open Internet rules. *See, e.g.,* EFF Comments at 6 n. 13.

[157] 47 U.S.C. 309(a); *see also* 47 U.S.C. 307(a) (''The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this [Act], shall grant to any applicant therefor a station license provided for by this [Act].'').

[158] In addition, the use of mobile VoIP applications is likely to constrain prices for CMRS voice services, similar to what we described earlier with regard to VoIP and traditional phone services.

[159] AT&T PN Reply at 32. AT&T asserts that winners of non-C-Block licenses paid a premium for licenses not subject to the open platform requirements that applied to the upper 700 MHz C Block licenses. *Id.* at 33–34.

auction or by other means.[160] In this case, parties were made well aware that the agency might extend openness requirements beyond the C Block, diminishing any reliance interest they might assert.[161] To the extent that AT&T argues that application of openness principles reduced auction bids on the C Block spectrum, we find that the reasons for the price differences between the C Block and other 700 MHz spectrum blocks are far more complex. A number of factors, including unique auction dynamics and significant differences between the C Block spectrum and other blocks of 700 MHz spectrum contributed to these price differences. In balancing the public interest factors we are required to consider, we have determined that adopting a targeted set of rules that apply to all mobile broadband providers is necessary at this time.

D. Authority To Collect Information To Enable the Commission To Perform Its Reporting Obligations to Congress

Additional sections of the Communications Act provide authority for our transparency requirement in particular. Section 4(k) provides for an annual report to Congress that ''shall contain * * * such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of interstate * * * wire and radio communication'' and provide ''recommendations to Congress as to additional legislation which the Commission deems necessary or desirable.'' [162] The Commission has previously relied on Section 4(k), among other provisions, as a basis for its authority to gather information.[163] The *Comcast* court, moreover, ''readily accept[ed]'' that ''certain assertions of Commission authority could be 'reasonably ancillary' to the Commission's statutory responsibility to issue a report to Congress. For example, the Commission might impose disclosure requirements on regulated entities in order to gather data needed for such a report.'' [164] We adopt such disclosure requirements here.

Finally, the Commission has broad authority under Section 218 of the Act to obtain ''full and complete information'' from common carriers and their affiliates. To the extent broadband providers are affiliated with communications common carriers, Section 218 allows the Commission to require the provision of information such as that covered by the transparency rule we adopt in this Order.[165] We believe that these disclosure requirements will assist us in carrying out our reporting obligations to Congress.

E. Constitutional Issues

Some commenters contend that open Internet rules violate the First Amendment and amount to an unconstitutional taking under the Fifth Amendment. We examine these constitutional arguments below, and find them unfounded.

1. First Amendment

Several broadband providers argue that open Internet rules are inconsistent with the free speech guarantee of the First Amendment. These commenters generally contend that because broadband providers distribute their own and third-party content to customers, they are speakers entitled to First Amendment protections. Therefore, they argue, rules that prevent broadband providers from favoring the transmission of some content over other content violate their free speech rights. Other commenters contend that none of the proposed rules implicate the First Amendment, because providing broadband service is conduct that is not correctly understood as speech.

In arguing that broadband service is protected by the First Amendment, AT&T compares its provision of broadband service to the operation of a cable television system, and points out that the Supreme Court has determined that cable programmers and cable operators engage in speech protected by the First Amendment. The analogy is inapt. When the Supreme Court held in *Turner I* that cable operators were protected by the First Amendment, the critical factor that made cable operators ''speakers'' was their production of programming and their exercise of ''editorial discretion over which programs and stations to include'' (and thus which to exclude).

Unlike cable television operators, broadband providers typically are best described not as ''speakers,'' but rather as conduits for speech. The broadband Internet access service at issue here does not involve an exercise of editorial discretion that is comparable to cable companies' choice of which stations or programs to include in their service. In this proceeding broadband providers have not, for instance, shown that they market their services as benefiting from an editorial presence.[166] To the contrary, Internet end users expect that they can obtain access to all or substantially all content that is available on the Internet, without the editorial

[160] The Commission may act by rulemaking to modify or impose rules applicable to all licensees or licensees in a particular class; in order to modify specific licenses held by particular licensees, however, the Commission generally is required to follow the modification procedure set forth in 47 U.S.C. 316. *See Comm. for Effective Cellular Rules* v. *FCC,* 53 F.3d 1309, 1319–20 (DC Cir. 1995).

[161] *See generally 700 MHz Second Report and Order,* 22 FCC Rcd at 15358–65. In the *700 MHz Second Report and Order,* the Commission stated that its decision to limit open-platform requirements to the C Block was based on the record before it ''at this time,'' *id.* at 15361, and noted that openness issues in the wireless industry were being considered more broadly in other proceedings. *Id.* at 15363. The public notice setting procedures for the 2008 auction advised bidders that the rules governing auctioned licenses would be subject to ''pending and future proceedings'' before the Commission. *See Auction of 700 MHz Band Licenses Scheduled for January 24, 2008,* Public Notice, 22 FCC Rcd 18141, 18156, para. 42 (2007).

[162] 47 U.S.C. 154(k). In a similar vein, Section 257 of the Act directs the Commission to report to Congress every three years on ''market entry barriers'' that the Commission recommends be eliminated, including ''barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services.'' 47 U.S.C. 257(a) & (c); *see also Comcast,* 600 F.3d at 659; NCTA Dec. 10, 2010 *Ex Parte* Letter at 3 (''[S]ection 257's reporting mandate provides a basis for the Commission to require providers of broadband Internet access service to disclose the terms and conditions of service in order to assess whether such terms hamper small business entry and, if so, whether any legislation may be required to address the problem.'') (footnote omitted).

[163] *See, e.g., New Part 4 of the Commission's Rules Concerning Disruptions to Commc'ns,* Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16837, paras. 1, 12 (2004) (extending Commission's reporting requirements for communications disruptions to certain providers of non-wireline communications, in part based on Section 4(k)); *DTV Consumer Educ. Initiative,* Report & Order, 23 FCC Rcd 4134, 4147, paras. 1, 2, 28 (2008) (requiring various entities, including broadcasters, to submit quarterly reports to the Commission detailing their consumer education efforts related to the DTV transition, in part based on section 4(k)); *Review of the Commission's Broad. Cable and Equal Emp't Opportunity Rules and Policies,* Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24077, paras. 5, 195 (2002) (promulgating recordkeeping and reporting requirements for broadcast licensees and other regulated entities to show compliance with equal opportunities hiring rules, in part based on section 4(k)).

[164] 600 F.3d at 659. All, or nearly all, providers of broadband Internet access service are regulated by the Commission insofar as they operate under certificates to provide common carriage service, or under licenses to use radio spectrum.

[165] *Cf. US West, Inc.* v. *FCC,* 778 F.2d 23, 26–27 (DC Cir. 1985) (acknowledging Commission's authority under Section 218 to impose reporting requirements on holding companies that owned local telephone companies).

[166] *See, e.g.,* AT&T, AT&T U-verse, *http://www.att-services.net/att-u-verse.html* (AT&T U-verse: ''Customers can get the information they want, when they want it''); Verizon, FiOS Internet, *http://www22.verizon.com/Residential/FiOSInternet/Overview.htm and Verizon,* High Speed Internet, *http://www22.verizon.com/Residential/HighSpeedInternet* (Verizon FiOS and High Speed Internet: ''Internet, plus all the free extras'').

intervention of their broadband provider.[167]

Consistent with that understanding, broadband providers maintain that they qualify for statutory immunity from liability for copyright violations or the distribution of offensive material precisely because they lack control over what end users transmit and receive.[168] In addition, when defending themselves against subpoenas in litigation involving alleged copyright violations, broadband providers typically take the position that they are simply conduits of information provided by others.[169]

To be sure, broadband providers engage in network management practices designed to protect their Internet services against spam and malicious content, but that practice bears little resemblance to an editor's choosing which programs, among a range of programs, to carry.[170] Furthermore, this Order does not limit broadband providers' ability to modify their own Web pages, or transmit any lawful message that they wish, just like any other speaker. Broadband providers are also free under this Order to offer a wide range of ''edited'' services. If, for example, a broadband provider wanted to offer a service limited to ''family friendly'' materials to end users who desire only such content, it could do so under the rules we promulgate in this Order.

AT&T and NCTA argue that open Internet rules interfere with the speech rights of content and application providers to the extent they are prevented from paying broadband providers for higher quality service. Purchasing a higher quality of termination service for one's own Internet traffic, though, is not speech—just as providing the underlying transmission service is not. Telephone common carriers, for instance, transmit users' speech for hire, but no court has ever suggested that regulation of common carriage arrangements triggers First Amendment scrutiny.

Even if open Internet rules did implicate expressive activity, they would not violate the First Amendment. Because the rules are based on the characteristics of broadband Internet access service, independent of content or viewpoint, they would be subject to intermediate First Amendment scrutiny.[171] The regulations in this Order are triggered by a broadband provider offering broadband Internet access, not by the message of any provider. Indeed, the point of open Internet rules is to protect traffic regardless of its content. Verizon's argument that such regulation is presumptively suspect because it makes speaker-based distinctions likewise lacks merit: Our action is based on the transmission service provided by broadband providers rather than on what providers have to say. In any event, speaker-based distinctions are permissible so long as they are '''justified by some special characteristic of' the particular medium being regulated''—here the ability of broadband providers to favor or disfavor Internet traffic to the detriment of innovation, investment, competition, public discourse, and end users.

Under intermediate scrutiny, a content-neutral regulation will be sustained if ''it furthers an important or substantial government interest * * * unrelated to the suppression of free expression,'' and if ''the means chosen'' to achieve that interest ''do not burden substantially more speech than is necessary.'' The government interests underlying this Order—preserving an open Internet to encourage competition and remove impediments to infrastructure investment while enabling consumer choice, end-user control, free expression, and the freedom to innovate without permission—ensure the public's access to a multiplicity of information sources and maximize the Internet's potential to further the public interest. As a result, these interests satisfy the intermediate-scrutiny standard.[172] Indeed, the interest in keeping the Internet open to a wide range of information sources is an important free speech interest in its own right. As *Turner I* affirmed, ''assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment.'' [173] This Order protects the speech interests of all Internet speakers.

Time Warner and Verizon contend that the government lacks important or substantial interests because the harms from prohibited practices supposedly are speculative. This ignores actual instances of harmful practices by broadband providers, as discussed in Part II.B. In any event, the Commission is not required to stay its hand until substantial harms already have occurred. On the contrary, the Commission's predictive judgments as to the development of a problem and likely injury to the public interest are entitled to great deference.

In sum, the rules we adopt are narrowly tailored to advance the important government interests at stake.

[167] *See* Verizon Comments at 117 (''[B]roadband providers today provide traditional Internet access services that offer subscribers access to *all lawful content* and have strong economic incentives to continue to do so.'') (emphasis added).

[168] *See* 17 U.S.C. 512(a) (a ''service provider shall not be liable * * * for infringement of copyright by reason of the provider's transmitting, routing, or providing connections for'' material distributed by others on its network); 47 U.S.C. 230(c)(1) (''[N]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider''); *see also Recording Indus. Ass'n of Am., Inc.* v. *Verizon Internet Servs., Inc.,* 351 F.3d 1229, 1234 (DC Cir. 2003) (discussing in context of subpoena issued to Verizon under the Digital Millennium Copyright Act Section 512(a)'s ''four safe harbors, each of which immunizes ISPs from liability from copyright infringement''), *cert. denied,* 543 U.S. 924 (2004). For example ''Verizon.net, the home page for Verizon Internet customers, contains a notice explicitly claiming copyright over the contents of the page. In contrast, the terms of service of Verizon Internet access explicitly disclaim any affiliation with content transmitted over the network.'' PK Reply at 22.

[169] *See, e.g., Charter Commc'ns, Inc., Subpoena Enforcement Matter,* 393 F.3d 771, 777 (8th Cir. 2005) (subpoenas served on Charter were not authorized because ''Charter's function'' as a broadband provider ''was limited to acting as a conduit for the allegedly copyright protected material'' at issue); *Verizon Internet Servs.,* 351 F.3d at 1237 (accepting Verizon's argument that Federal copyright law ''does not authorize the issuance of a subpoena to an ISP acting as a mere conduit for the transmission of information sent by others'').

[170] We recognize that in two cases, Federal district courts have concluded that the provision of broadband service is ''speech'' protected by the First Amendment. In *Itasca,* the district court reasoned that broadband providers were analogous to cable and satellite television companies, which are protected by the First Amendment. *Ill. Bell Tel. Co.* v. *Vill. of Itasca,* 503 F. Supp. 2d 928, 947–49 (N.D. Ill. 2007). And in *Broward County,* the district court determined that the transmission function provided by broadband service could not be separated from the content of the speech being transmitted. *Comcast Cablevision of Broward Cnty., Inc.* v. *Broward Cnty.,* 124 F. Supp. 2d 685, 691–92 (S.D. Fla. 2000). For the reasons stated, we disagree with the reasoning of those decisions.

[171] *See Turner I,* 512 U.S. at 642. Regulations generally are content neutral if justified without reference to content or viewpoint. *Id.* at 643; *BellSouth Corp.* v. *FCC,* 144 F.3d 58, 69 (DC Cir. 1998); *Time Warner Entm't Co., L.P.* v. *FCC,* 93 F.3d 957, 966–67 (DC Cir. 1996).

[172] These interests are consistent with the Communications Act's charge to the Commission to make available a ''rapid and efficient'' national communications infrastructure, 47 U.S.C. 151; to promote, consistent with a ''vibrant and competitive free market,'' ''the continued development of the Internet and other interactive computer services''; and to ''encourage the development of technologies which maximize user control over what information is received,'' 47 U.S.C. 230(b)(1)–(3). Indeed, AT&T concedes that ''[t]here is little doubt that preservation of an open and free Internet is an 'important or substantial government interest.' '' AT&T Comments at 237 (quoting *Turner I,* 512 U.S. at 662).

[173] 512 U.S. at 663. The *Turner I* Court continued: ''Indeed, it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'' *Id.* (internal quotation marks omitted). *See also FCC* v. *Nat'l Citizens Comm. for Broad.,* 436 U.S. 775, 795 (1978) (*NCCB*) (quoting *Associated Press* v. *United States,* 326 U.S. 1, 20 (1945)).

The rules apply only to that portion of the end user's link to the Internet over which the end user's broadband provider has control. They forbid only those actions that could unfairly impede the public's use of this important resource. Broadband providers are left with ample opportunities to transmit their own content, to maintain their own Web sites, and to engage in reasonable network management. In addition, they can offer edited services to their end users. The rules are narrowly tailored because they address the problem at hand, and go no farther.[174]

2. Fifth Amendment Takings

Contrary to the claims of some broadband providers, open Internet rules pose no issue under the Fifth Amendment's Takings Clause. Our rules do not compel new services or limit broadband providers' flexibility in setting prices for their broadband Internet access services, but simply require transparency and prevent broadband providers—when they *voluntarily* carry Internet traffic—from blocking or unreasonably discriminating in their treatment of that traffic. Moreover, this Order involves setting policies for communications networks, an activity that has been one of this Commission's central duties since it was established in 1934.

Absent compelled permanent physical occupations of property,[175] takings analysis involves ''essentially ad hoc, factual inquiries'' regarding such factors as the degree of interference with ''investment-backed expectations,'' the ''economic impact of the regulation'' and ''the character of the government action.'' In this regard, takings law makes clear that property owners cannot, as a general matter, expect that existing legal requirements regarding their property will remain entirely unchanged. As discussed in Part II, the history of broadband Internet access services offers no basis for reasonable reliance on a policy regime in which providers are free to conceal or discriminate without limit, and the rules we adopt in this Order should not impose substantial new costs on broadband providers.[176] Accordingly, our Order does not raise constitutional concerns under regulatory takings analysis.

V. Enforcement

Prompt and effective enforcement of the rules adopted in this Order is crucial to preserving an open Internet and providing clear guidance to stakeholders. We anticipate that many of the disputes that will arise regarding alleged open Internet violations—particularly those centered on engineering-focused questions—will be resolvable by the parties without Commission involvement. We thus encourage parties to endeavor to resolve disputes through direct negotiation focused on relevant technical issues, and to consult with independent technical bodies. Many commenters endorse this approach.[177]

Should issues develop that are not resolved through private processes, the Commission will provide backstop mechanisms to address such disputes.[178] In the *Open Internet NPRM,* the Commission proposed to enforce open Internet rules through case-by-case adjudication, a proposal that met with almost universal support among commenters. The Commission also sought comment on whether it should adopt complaint procedures specifically governing alleged violations of open Internet rules, and whether any of the Commission's existing rules provide a suitable model.

A. Informal Complaints

Many commenters urge the Commission to adopt informal complaint procedures that equip end users and edge providers with a simple and cost-effective option for calling attention to open Internet rule violations. We agree that end users, edge providers, and others should have an efficient vehicle to bring potential open Internet violations to the Commission, and indeed, such a vehicle is already available. Parties may submit complaints to the Commission pursuant to Section 1.41 of the Commission's rules. Unlike formal complaints, no filing fee is required. We recommend that end users and edge providers submit any complaints through the Commission's Web site, at *http://esupport.fcc.gov/complaints.htm.* The Consumer and Governmental Affairs Bureau will also make available resources explaining these rules and facilitating the filing of informal complaints. Although individual informal complaints will not typically result in written Commission orders, the Enforcement Bureau will examine trends or patterns in complaints to identify potential targets for investigation and enforcement action.[179]

B. Formal Complaints

Many commenters propose that the Commission adopt formal complaint procedures to address open Internet disputes. We agree that such procedures should be available in the event an open Internet dispute cannot be resolved through other means. Formal complaint processes permit anyone—including individual end users and edge providers—to file a claim alleging that another party has violated a statute or rule, and asking the Commission to rule on the dispute. A number of commenters suggest that existing Commission procedural rules could readily be utilized to govern open Internet complaints.

We conclude that adopting a set of procedures based on our Part 76 cable access complaint rules will best suit the needs of open Internet disputes that may arise.[180] Although similar to the

[174] AT&T contends (AT&T Comments at 219–20) that our rules would conflict with prohibitions contained in Section 326 of the Act against ''censorship'' of ''radio communications'' or interference with ''the right of free speech by means of radio communication.'' 47 U.S.C. 326. For the same reasons that our rules do not violate the First Amendment, they do not violate Section 326's statutory prohibition.

[175] Verizon contends that ''[t]o the extent the proposed rules would prohibit the owner of a broadband network from setting the terms on which other providers can occupy its property, the rule would give those providers the equivalent of a permanent easement on the network—a form of physical occupation.'' Verizon Comments at 119 (citing *Loretto* v. *Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 430 (1982)). Not so. Such transmissions are neither ''occupations'' nor ''permanent.'' *See Loretto,* 458 U.S. at 435 n.12; *see also Cablevision Sys. Corp.* v. *FCC,* 570 F.3d 83, 98 (2d Cir. 2009) (upholding Commission's finding that a must-carry obligation did not constitute a physical occupation because ''the transmission of WRNN's signal does not involve a physical occupation of Cablevision's equipment or property''). In addition, to the extent broadband providers voluntarily allow any customer to transmit or receive information, the imposition of reasonable non-discrimination requirements would not be a taking under *Loretto. See Hilton Washington Corp.* v. *District of Columbia,* 777 F.2d 47 (DC Cir. 1985); *Yee* v. *City of Escondido,* 503 U.S. 519, 531 (1992).

[176] This history likewise refutes the assertion that prior Commission decisions ''engendered serious reliance interests'' that would be unsettled by our adoption of open Internet rules. Baker Statement at *11 n.41 (citation and internal quotation marks omitted).

[177] *See, e.g.,* Bright House Networks Comments at 10; CCIA Comments at 2, 34; Google-Verizon Joint Comments at 4 (''A robust role for technical and industry groups should be encouraged to address any challenges or problems that may arise and to help guide the practices of all players. * * *''); WISPA Comments at 14–16; DISH Network Reply at 24–26; Qwest Reply at 32.

[178] Providers and other parties may also seek guidance from the Commission on questions about the application of the open Internet rules in particular contexts, for instance by requesting a declaratory ruling. *See* 47 CFR 1.2.

[179] As with our other complaint rules, the availability of complaint procedures does not bar the Commission from initiating separate and independent enforcement proceedings for potential violations. *See* 47 CFR 0.111(a)(16).

[180] The Commission is authorized to resolve formal complaints—and adopt procedural rules governing the process—pursuant to Sections 4(i)

complaint rules under Section 208, we find that the part 76 rules are more streamlined and thus preferable.[181]

Under the rules we adopt in this Order, any person may file a formal complaint. Before filing a complaint, a complainant must first notify the defendant in writing that it intends to file a complaint with the Commission for violation of rules adopted in this Order.[182] After the complaint has been filed, the defendant must submit an answer, and the complainant may submit a reply. In some cases, the facts might be uncontested, and the proceeding can be completed based on the pleadings. In other cases, a thorough analysis of the challenged conduct might require further factual development and briefing.[183] Based on the record developed, Commission staff (or the Commission itself) will issue an order determining the lawfulness of the challenged practice.

As in other contexts, complainants in open Internet proceedings will ultimately bear the burden of proof to demonstrate by a preponderance of the evidence that an alleged violation of the rules has occurred. A number of commenters propose, however, that once a complainant makes a *prima facie* showing that an open Internet rule has been violated, the burden should shift to the broadband provider to demonstrate that the challenged practice is reasonable. This approach is appropriate in the context of certain open Internet complaints, when the evidence necessary to apply the open Internet rules is predominantly in the possession of the broadband provider. Accordingly, we require a complainant alleging a violation of the open Internet rules to plead fully and with specificity the basis of its claims and to provide facts, supported when possible by documentation or affidavit, sufficient to establish a *prima facie* case of an open Internet violation. In turn, the broadband provider must answer each claim with particularity and furnish facts, supported by documentation or affidavit, demonstrating the reasonableness of the challenged practice. At that point, the complainant will have the opportunity to demonstrate that the practice is not reasonable. Should experience reveal the need to adjust the burden of proof in open Internet disputes, we will do so as appropriate.

Several commenters urge the Commission to adopt timelines for the complaint process. We recognize the need to resolve alleged violations swiftly, and accordingly will allow requests for expedited treatment of open Internet complaints under the Enforcement Bureau's Accelerated Docket procedures.[184]

In resolving formal complaints, the Commission will draw on resources from across the agency—including engineering, economic, and legal experts—to resolve open Internet complaints in a timely manner. In addition, we will take into account standards and best practices adopted by relevant standard-setting organizations, and such organizations and outside advisory groups also may provide valuable technical assistance in resolving disputes. Further, in order to facilitate prompt decision-making, when possible we will resolve open Internet formal complaints at the bureau level, rather than the Commission level.[185]

C. FCC Initiated Actions

As noted above, in addition to ruling on complaints, the Commission has the authority to initiate enforcement actions on its own motion. For instance, Section 403 of the Act permits the Commission to initiate an inquiry concerning any question arising under the Act, and Section 503(b) authorizes us to issue citations and impose forfeiture penalties for violations of our rules. Should the Commission find that a broadband Internet provider is engaging in activity that violates the open Internet rules, we will take appropriate enforcement action, including the issuance of forfeitures.

VI. Effective Date, Open Internet Advisory Committee, and Commission Review

Some of the rules adopted in this Order contain new information collection requirements subject to the Paperwork Reduction Act (PRA). Our rules addressing transparency are among those requiring PRA approval. The disclosure rule is essential to the proper functioning of our open Internet framework, and we therefore make all the rules we adopt in this Order effective November 20, 2011.

To assist the Commission in monitoring the state of Internet openness and the effects of our rules, we intend to create an Open Internet Advisory Committee. The Committee, to be created in consultation with the General Services Administration pursuant to the Federal Advisory Committee Act, will be an inclusive and transparent body that will hold public meetings. It will be comprised of a balanced group including consumer advocates; Internet engineering experts; content, application, and service providers; network equipment and end-user-device manufacturers and suppliers; investors; broadband service providers; and other parties the Commission may deem appropriate. The Committee will aid the Commission in tracking developments with respect to the freedom and openness of the Internet, in particular with respect to issues discussed in this Order, including technical standards and issues relating to mobile broadband and specialized services. The Committee will report to the Commission and make recommendations it deems appropriate concerning our open Internet framework.

In light of the pace of change of technologies and the market for broadband Internet access service, and to evaluate the efficacy of the framework adopted in this Order for preserving Internet openness, the Commission will review all of the rules in this Order no later than two years from their effective date, and will adjust its open Internet framework as appropriate.

VII. Procedural Matters

A. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *Open Internet NPRM* in GN Docket No. 09–191 and WC Docket No. 07–52. The Commission sought written public

and 4(j) of the Act. 47 U.S.C.. 154(i), 154(j). In addition, Section 403 of the Act enables the Commission to initiate inquiries and enforce orders on its own motion. 47 U.S.C. 403. Inherent in such authority is the ability to resolve disputes concerning violations of the open Internet rules.

[181] The Part 76 rules were promulgated to address complaints against cable systems. *See 1998 Biennial Regulatory Review—Part 76—Cable Television Service Pleading and Complaint Rules,* Report and Order, 14 FCC Rcd 418, 420, para. 6 (1999) (''*1998 Biennial Review*''). For example, a local television station may bring a complaint, pursuant to the Part 76 rules, claiming that it was wrongfully denied carriage on a cable system. *See* 47 CFR 76.61. Some complaints alleging open Internet violations may be analogous, such as those brought by a content or application provider claiming that broadband providers—many of which are cable companies—are unlawfully blocking or degrading access to end users.

[182] As with other formal complaint procedures, a filing fee will be required. *See* 47 CFR 1.1106.

[183] The rules give the Commission discretion to order other procedures as appropriate, including briefing, status conferences, oral argument, evidentiary hearings, discovery, or referral to an administrative law judge. *See* 47 CFR 8.14(e) through (g).

[184] *See* 47 CFR 1.730. Furthermore, for good cause, pursuant to 47 CFR 1.3, the Commission may shorten the deadlines or otherwise revise the procedures herein to expedite the adjudication of complaints.

[185] The rules adopted in this Order explicitly authorize the Enforcement Bureau to resolve complaints alleging open Internet violations.

comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

In this Order the Commission takes an important step to preserve the Internet as an open platform for innovation, investment, job creation, economic growth, competition, and free expression. To provide greater clarity and certainty regarding the continued freedom and openness of the Internet, we adopt three basic rules that are grounded in broadly accepted Internet norms, as well as our own prior decisions:

i. Transparency. Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services;

ii. No blocking. Fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful Web sites, or block applications that compete with their voice or video telephony services; and

iii. No unreasonable discrimination. Fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic.

We believe these rules, applied with the complementary principle of reasonable network management, will empower and protect consumers and innovators while helping ensure that the Internet continues to flourish, with robust private investment and rapid innovation at both the core and the edge of the network. This is consistent with the National Broadband Plan goal of broadband access that is ubiquitous and fast, promoting the global competitiveness of the United States.

In late 2009, we launched a public process to determine whether and what actions might be necessary to preserve the characteristics that have allowed the Internet to grow into an indispensable platform supporting our nation's economy and civic life, and to foster continued investment in the physical networks that enable the Internet. Since then, more than 100,000 commenters have provided written input. Commission staff held several public workshops and convened a Technological Advisory Process with experts from industry, academia, and consumer advocacy groups to collect their views regarding key technical issues related to Internet openness.

This process has made clear that the Internet has thrived because of its freedom and openness—the absence of any gatekeeper blocking lawful uses of the network or picking winners and losers online. Consumers and innovators do not have to seek permission before they use the Internet to launch new technologies, start businesses, connect with friends, or share their views. The Internet is a level playing field. Consumers can make their own choices about what applications and services to use and are free to decide what content they want to access, create, or share with others. This openness promotes competition. It also enables a self-reinforcing cycle of investment and innovation in which new uses of the network lead to increased adoption of broadband, which drives investment and improvements in the network itself, which in turn lead to further innovative uses of the network and further investment in content, applications, services, and devices. A core goal of this Order is to foster and accelerate this cycle of investment and innovation.

The record and our economic analysis demonstrate, however, that the openness of the Internet cannot be taken for granted, and that it faces real threats. Indeed, we have seen broadband providers endanger the Internet's openness by blocking or degrading content and applications without disclosing their practices to end users and edge providers, notwithstanding the Commission's adoption of open Internet principles in 2005. In light of these considerations, as well as the limited choices most consumers have for broadband service, broadband providers' financial interests in telephony and pay television services that may compete with online content and services, and the economic and civic benefits of maintaining an open and competitive platform for innovation and communication, the Commission has long recognized that certain basic standards for broadband provider conduct are necessary to ensure the Internet's continued openness. The record also establishes the widespread benefits of providing greater clarity in this area—clarity that the Internet's openness will continue; that there is a forum and procedure for resolving alleged open Internet violations; and that broadband providers may reasonably manage their networks and innovate with respect to network technologies and business models. We expect the costs of compliance with our prophylactic rules to be small, as they incorporate longstanding openness principles that are generally in line with current practices and with norms endorsed by many broadband providers. Conversely, the harms of open Internet violations may be substantial, costly, and in some cases potentially irreversible.

The rules we proposed in the *Open Internet NPRM* and those we adopt in this Order follow directly from the Commission's bipartisan *Internet Policy Statement,* adopted unanimously in 2005 and made temporarily enforceable for certain providers in 2005 and 2006; openness protections the Commission established in 2007 for users of certain wireless spectrum; and a notice of inquiry in 2007 that asked, among other things, whether the Commission should add a principle of nondiscrimination to the *Internet Policy Statement.* Our rules build upon these actions, first and foremost by requiring broadband providers to be transparent in their network management practices, so that end users can make informed choices and innovators can develop, market, and maintain Internet-based offerings. The rules also prevent certain forms of blocking and discrimination with respect to content, applications, services, and devices that depend on or connect to the Internet.

An open, robust, and well-functioning Internet requires that broadband providers have the flexibility to reasonably manage their networks. Network management practices are reasonable if they are appropriate and tailored to achieving a legitimate network management purpose. Transparency and end-user control are touchstones of reasonableness.

We recognize that broadband providers may offer other services over the same last-mile connections used to provide broadband service. These ''specialized services'' can benefit end users and spur investment, but they may also present risks to the open Internet. We will closely monitor specialized services and their effects on broadband service to ensure, through all available mechanisms, that they supplement but do not supplant the open Internet.

Mobile broadband is at an earlier stage in its development than fixed broadband and is evolving rapidly. For that and other reasons discussed below, we conclude that it is appropriate at this time to take measured steps in this area. Accordingly, we require mobile providers to comply with the transparency rule, which includes enforceable disclosure obligations regarding device and application certification and approval processes; we prohibit providers from blocking lawful Web sites; and we prohibit providers from blocking applications that compete with providers' voice and video telephony services. We will closely

monitor the development of the mobile broadband market and will adjust the framework we adopt in this Order as appropriate.

These rules are within our jurisdiction over interstate and foreign communications by wire and radio. Further, they implement specific statutory mandates in the Communications Act (''Act'') and the Telecommunications Act of 1996 (''1996 Act''), including provisions that direct the Commission to promote Internet investment and to protect and promote voice, video, and audio communications services.

The framework we adopt in this Order aims to ensure the Internet remains an open platform—one characterized by free markets and free speech—that enables consumer choice, end-user control, competition through low barriers to entry, and the freedom to innovate without permission. The framework does so by protecting openness through high-level rules, while maintaining broadband providers' and the Commission's flexibility to adapt to changes in the market and in technology as the Internet continues to evolve.

Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA and Summary of the Assessment of the Agency of Such Issues

A few commenters discussed the IRFA from the *Open Internet NPRM.* The Center for Regulatory Effectiveness (CRE) argued that the *Open Internet NPRM's* IRFA was defective because it ineffectively followed 5 U.S.C. secs. 603(a) (''Such analysis shall describe the impact of the proposed rule on small entities.'') and 603(c) (''Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.''). CRE does not provide any case law to support its interpretation that the Commission is in violation of these aspects of the statute, nor does CRE attempt to argue that SBEs have actually or theoretically been harmed. Rather, CRE is concerned that by not following its reading of these parts of the law, the Commission is being hypocritical by not being transparent enough. CRE recommends that the Commission publish a revised IRFA for public comment. We disagree: we believe that the IRFA was adequate and that the opportunity for SBEs to comment in a publicly accessible docket should remove any potential harm to openness that CRE is concerned with, as well as any harms to SBEs that could occur by not following CRE's interpretation of the law.

The Smithville Telephone Company (Smithville) notes that many ILECs have vastly fewer employees than the 1500 or less that is required to be recognized as a small business under the SBA. For instance, Smithville states that it has seven employees. Smithville also observes that some other small ILECs in Mississippi have staffs of 8, 4, 2, 3, and 21. Smithville argues that companies of this size do not have the resources to fully analyze issues and participate in Commission proceedings. Smithville would like the Commission to use the data that it regularly receives from carriers to set a carrier size where exemptions from proposed rules and less complex reporting requirements can be set. In the present case, however, we determine that this is not necessary. We expect the costs of compliance with these rules to be small, as the high-level rules incorporate longstanding openness principles that appear to be generally in line with most broadband providers' current practices. We note that Smithville does not cite any particular source of increased costs, or attempt to estimate costs of compliance. Nonetheless, the Commission attempts to ease any burden that the transparency rule may cause by only requiring disclosure on a Web site and at the point of sale, making the transparency rule flexible. In addition, by setting the effective date of these rules as November 20, 2011, the Order gives broadband providers adequate time to develop cost-effective methods of compliance. Finally, to the extent that the transparency rule imposes a new obligation on small businesses, we find that the flexibility built into the rule addresses any compliance concerns.

The American Cable Association (ACA) notes that the Commission has an obligation to ''include in the FRFA a comprehensive discussion of the economic impact its actions will have on small cable operators.'' The ACA cites its other comments, which ask the Commission to clarify that the codified principles would not obligate broadband service providers to (1) ''employ specific network management practices,'' (2) ''impose affirmative obligations dealing with unlawful content or the unlawful transfer of content,'' (3) ''accommodate lawful devices that are not supported by a broadband provider's network,'' and (4) ''provide information regarding a company's network management practices through any reporting, recordkeeping, or means other than through a company's Web site or Web page.'' Addressing ACA's arguments with regard to cable operators, and fixed broadband providers in particular, (1), the Commission is not requiring specific network management practices. The Commission only requires that any network management be reasonable; the Commission does not require that any specific practice be employed. Regarding (2), the rules do not impose affirmative obligations dealing with unlawful content or the unlawful transfer of content. We state that the ''no blocking'' rule does not prevent or restrict a broadband provider from refusing to transmit material such as child pornography. In response to (3), the Order clarifies that the ''no blocking'' rule protects only devices that do not harm the network and only requires fixed broadband service providers to allow devices that conform to publicly available industry standards applicable to the providers' services. Directly addressing ACA's concern, the Order notes that a DOCSIS-based provider is not required to support a DSL modem. In response to (4), the disclosure requirement in this Order does not require additional forms of disclosure, other than, at a minimum, requiring broadband providers to prominently display or provide links to disclosures on a publicly available, easily accessible Web site that is available to current and prospective end users and edge providers as well as to the Commission, and disclosing relevant information at the point of sale.

Description and Estimate of the Number of Small Entities to Which the Rules Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

1. Total Small Entities

Our action may, over time, affect small entities that are not easily categorized at present. We therefore

describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.2 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

2. Internet Access Service Providers

Internet Service Providers. The 2007 Economic Census places these firms, whose services might include voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled ''broadband.'' The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. These are labeled non-broadband. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees. For the second category, the data show that 1,682 firms operated for the entire year. Of those, 1,675 had annual receipts below $25 million per year, and an additional two had receipts of between $25 million and $ 49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

The ISP industry has changed since 2007. The 2007 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

3. Wireline Providers

Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are ''Other Local Service Providers.'' Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities that may be affected by our action.

We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

4. Wireless Providers—Fixed and Mobile

For reasons discussed above in the text of the Order, the Commission has distinguished wireless fixed broadband Internet access service from wireless mobile broadband Internet access service. Specifically, the Commission decided that fixed broadband Internet access service providers, whether wireline or wireless, must disclose their network management practices and the performance characteristics and commercial terms of their broadband services; may not block lawful content, applications, services or non-harmful

devices; and may not unreasonably discriminate in transmitting lawful network traffic. Also for the reasons discussed above, the Commission decided that wireless mobile broadband Internet access service providers must disclose their network management practices and performance characteristics and commercial terms of their broadband service and may not block lawful Web sites or block applications that compete with their voice or video telephony service. Thus, to the extent the wireless services listed below are used by wireless firms for fixed and mobile broadband Internet access services, the actions in this Order may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), preliminary data for 2007 show that there were 11,927 firms operating that year. While the Census Bureau has not released data on the establishments broken down by number of employees, we note that the Census Bureau lists total employment for all firms in that sector at 281,262. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

1670–1675 MHz Services. This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C– and F–Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F–Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C–Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C–, D–, E–, and F–Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C–, D–, E–, and F–Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C–, D–, E–, and F–Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

Specialized Mobile Radio Licenses. The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held

on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

Upper 700 MHz Band Licenses. In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

700 MHz Guard Band Licensees. In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

Air-Ground Radiotelephone Service. The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are fewer than 10 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–

1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)). For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

3650–3700 MHz band. In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

Fixed Microwave Services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), preliminary data for 2007 show that there were 11,927 firms operating that year. While the Census Bureau has not released data on the establishments broken down by number of employees, we note that the Census Bureau lists total employment for all firms in that sector at 281,262. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of firms using microwave services are small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms

in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

5. Satellite Service Providers

Satellite Telecommunications Providers. Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.

The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

The second category of All Other Telecommunications comprises, *inter alia,* ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

6. Cable Service Providers

Because Section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

Cable and Other Program Distributors. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

7. Electric Power Generators, Transmitters, and Distributors

Electric Power Generators, Transmitters, and Distributors. The Census Bureau defines an industry group comprised of ''establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we

estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

As indicated above, the Internet's legacy of openness and transparency has been critical to its success as an engine for creativity, innovation, and economic development. To help preserve this fundamental character of the Internet, the Order requires that broadband providers must, at a minimum, prominently display or provide links to disclosures on a publicly available, easily accessible Web site that is available to current and prospective end users and edge providers as well as to the Commission, and at the point of sale. Providers should ensure that all Web site disclosures are accessible by persons with disabilities. We do not require additional forms of disclosure. Broadband providers' disclosures to the public include disclosure to the Commission; that is, the Commission will monitor public disclosures and may require additional disclosures directly to the Commission. We anticipate that broadband providers may be able to satisfy the transparency rule through a single disclosure, and therefore do not require multiple disclosures targeted at different audiences. This affects all classes of small entities mentioned in Appendix B, part C, and requires professional skills of entering information onto a Web page and an understanding of the entities' network practices, both of which are easily managed by staff of these types of small entities.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The rules adopted in this Order are generally consistent with current industry practices, so the costs of compliance should be small. Although some commenters assert that a disclosure rule will impose significant burdens on broadband providers, no commenter cites any particular source of increased costs, or attempts to estimate costs of compliance. For a number of reasons, we believe that the costs of the disclosure rule we adopt in this Order are outweighed by the benefits of empowering end users to make informed choices and of facilitating the enforcement of the other open Internet rules. First, we require only that providers post disclosures on their Web sites and at the point of sale, not that they bear the cost of printing and distributing bill inserts or other paper documents to all existing customers. Second, although we may subsequently determine that it is appropriate to require that specific information be disclosed in particular ways, the transparency rule we adopt in this Order gives broadband providers flexibility to determine what information to disclose and how to disclose it. We also expressly exclude from the rule competitively sensitive information, information that would compromise network security, and information that would undermine the efficacy of reasonable network management practices. Third, by setting the effective date of these rules as November 20, 2011, we give broadband providers adequate time to develop cost effective methods of compliance. Thus, the rule gives broadband providers—including small entities—sufficient time and flexibility to implement the rules in a cost-effective manner. Finally, these rules provide certainty and clarity that are beneficial both to broadband providers and to their customers.

Report to Congress

The Commission has sent a copy of the Order, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

B. Paperwork Reduction Act of 1995 Analysis

This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

C. Congressional Review Act

The Commission has sent a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Data Quality Act

The Commission certifies that it has complied with the Office of Management and Budget Final Information Quality Bulletin for Peer Review, 70 FR 2664, January 14 (2005), and the Data Quality Act, Public Law 106–554 (2001), codified at 44 U.S.C. 3516 note, with regard to its reliance on influential scientific information in the Report and Order in GN Docket No. 09–191 and WC Docket No. 07–52.

E. Accessible Formats

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, *etc.*) by *e-mail: FCC504@fcc.gov; phone:* (202) 418–0530 (voice), (202) 418–0432 (TTY).

VIII. Ordering Clauses

Accordingly, *it is ordered* that, pursuant to Sections 1, 2, 3, 4, 201, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 602, 616, and 628, of the Communications Act of 1934, as amended, and Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. secs. 151, 152, 153, 154, 201, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, 1302, this Report and Order *is adopted.*

It is further ordered that Part 0 of the Commission's rules *is amended* as set forth in Appendix B.

It is further ordered that Part 8 of the Commission's Rules, 47 CFR Part 8, *is added* as set forth in Appendix A and B.

It is further ordered that this Report and Order shall become effective November 20, 2011.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Cable television, Communications, Common carriers, Communications common carriers, Radio, Satellites, Telecommunications, Telephone.

47 CFR Part 8

Cable television, Communications, Common carriers, Communications common carriers, Radio, Satellites, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 to read as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.111 is amended by adding paragraph (a)(24) to read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

(24) Resolve complaints alleging violations of the open Internet rules.

* * * * *

■ 3. Add part 8 to read as follows:

PART 8—PRESERVING THE OPEN INTERNET

Sec.
8.1 Purpose.
8.3 Transparency.
8.5 No Blocking.
8.7 No Unreasonable Discrimination.
8.9 Other Laws and Considerations.
8.11 Definitions.
8.12 Formal Complaints.
8.13 General pleading requirements.
8.14 General formal complaint procedures.
8.15 Status conference.
8.16 Confidentiality of proprietary information.
8.17 Review.

Authority: 47 U.S.C. secs. 151, 152, 153, 154, 201, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, 1302.

§ 8.1 Purpose.

The purpose of this part is to preserve the Internet as an open platform enabling consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission.

§ 8.3 Transparency.

A person engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.

§ 8.5 No Blocking.

(a) A person engaged in the provision of fixed broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management.

(b) A person engaged in the provision of mobile broadband Internet access service, insofar as such person is so engaged, shall not block consumers from accessing lawful Web sites, subject to reasonable network management; nor shall such person block applications that compete with the provider's voice or video telephony services, subject to reasonable network management.

§ 8.7 No Unreasonable Discrimination.

A person engaged in the provision of fixed broadband Internet access service, insofar as such person is so engaged, shall not unreasonably discriminate in transmitting lawful network traffic over a consumer's broadband Internet access service. Reasonable network management shall not constitute unreasonable discrimination.

§ 8.9 Other Laws and Considerations.

(a) Nothing in this part supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.

(b) Nothing in this part prohibits reasonable efforts by a provider of broadband Internet access service to address copyright infringement or other unlawful activity.

§ 8.11 Definitions.

(a) *Broadband Internet access service.* A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this part.

(b) *Fixed broadband Internet access service.* A broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes fixed wireless services (including fixed unlicensed wireless services), and fixed satellite services.

(c) *Mobile broadband Internet access service.* A broadband Internet access service that serves end users primarily using mobile stations.

(d) *Reasonable network management.* A network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

§ 8.12 Formal Complaints.

Any person may file a formal complaint alleging a violation of the rules in this part.

§ 8.13 General pleading requirements.

(a) *General pleading requirements.* All written submissions, both substantive and procedural, must conform to the following standards:

(1) A pleading must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy should be pleaded fully and with specificity.

(2) Pleadings must contain facts that, if true, are sufficient to warrant a grant of the relief requested.

(3) Facts must be supported by relevant documentation or affidavit.

(4) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Each submission must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions.

(5) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority.

Opposing authorities must be distinguished. Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(6) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(7) Parties seeking expedited resolution of their complaint may request acceptance on the Enforcement Bureau's Accelerated Docket pursuant to the procedures at § 1.730 of this chapter.

(b) *Copies to be Filed.* The complainant shall file an original copy of the complaint, accompanied by the correct fee, in accordance with part 1, subpart G (*see* § 1.1106 of this chapter) and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) Serve two copies on the Market Disputes Resolution Division, Enforcement Bureau;

(3) Serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process, if available, on the same date that the complaint is filed with the Commission.

(c) *Prefiling notice required.* Any person intending to file a complaint under this section must first notify the potential defendant in writing that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(d) *Frivolous pleadings.* It shall be unlawful for any party to file a frivolous pleading with the Commission. Any violation of this paragraph shall constitute an abuse of process subject to appropriate sanctions.

§ 8.14 General formal complaint procedures.

(a) *Complaints.* In addition to the general pleading requirements, complaints must adhere to the following requirements:

(1) *Certificate of service.* Complaints shall be accompanied by a certificate of service on any defendant.

(2) *Statement of relief requested*—(i) *The complaint shall state the relief requested.* It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest.

(ii) The complaint shall set forth all steps taken by the parties to resolve the problem.

(iii) A complaint may, on request of the filing party, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition or complaint. A request for the return of an initiating document will be regarded as a request for dismissal.

(3) Failure to prosecute. Failure to prosecute a complaint, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice if it occurs prior to the adoption date of any final action taken by the Commission with respect to the initiating pleading.

(b) *Answers to complaints.* Unless otherwise directed by the Commission, any party who is served with a complaint shall file an answer in accordance with the following requirements:

(1) The answer shall be filed within 20 days of service of the complaint.

(2) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any party against whom a complaint is filed failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(3) Facts must be supported by relevant documentation or affidavit.

(4) The answer shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the answer shall specify so much of it as is true and shall deny only the remainder, and state in detail the basis of that denial.

(5) Averments in a complaint are deemed to be admitted when not denied in the answer.

(c) *Reply.* In addition to the general pleading requirements, replies must adhere to the following requirements:

(1) The complainant may file a reply to a responsive pleading that shall be served on the defendant and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. Unless expressly permitted by the Commission, replies shall not contain new matters.

(2) Failure to reply will not be deemed an admission of any allegations contained in the responsive pleading, except with respect to any affirmative defense set forth therein.

(3) Unless otherwise directed by the Commission, replies must be filed within ten (10) days after submission of the responsive pleading.

(d) *Motions.* Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted.

(e) *Additional procedures and written submissions.* (1) The Commission may specify other procedures, such as oral argument or evidentiary hearing directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

(2) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including copies of all contracts and documents reflecting arrangements and understandings alleged to violate the requirements set forth in the Communications Act and in this part, as well as affidavits and exhibits.

(3) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(i) These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citations to the record, and supported by relevant authority and analysis.

(ii) The schedule for filing any briefs shall be at the discretion of the Commission. Unless ordered otherwise

by the Commission, such briefs shall not exceed fifty (50) pages.

(iii) Reply briefs may be submitted at the discretion of the Commission. Unless ordered otherwise by the Commission, reply briefs shall not exceed thirty (30) pages.

(f) *Discovery.* (1) The Commission may in its discretion order discovery limited to the issues specified by the Commission. Such discovery may include answers to written interrogatories, depositions, document production, or requests for admissions.

(2) The Commission may in its discretion direct the parties to submit discovery proposals, together with a memorandum in support of the discovery requested. Such discovery requests may include answers to written interrogatories, admissions, document production, or depositions. The Commission may hold a status conference with the parties, pursuant to § 8.15, to determine the scope of discovery, or direct the parties regarding the scope of discovery. If the Commission determines that extensive discovery is required or that depositions are warranted, the Commission may advise the parties that the proceeding will be referred to an administrative law judge in accordance with paragraph (g) of this section.

(g) *Referral to administrative law judge.* (1) After reviewing the pleadings, and at any stage of the proceeding thereafter, the Commission may, in its discretion, designate any proceeding or discrete issues arising out of any proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the Commission shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission.

(3) Unless otherwise directed by the Commission, or upon motion by the Enforcement Bureau Chief, the Enforcement Bureau Chief shall not be deemed to be a party to a proceeding designated for a hearing before an administrative law judge pursuant to this paragraph (g).

(h) *Commission ruling.* The Commission (or the Enforcement Bureau on delegated authority), after consideration of the pleadings, shall issue an order ruling on the complaint.

§ 8.15 Status conference.

(a) In any proceeding subject to the part 8 rules, the Commission may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of the matters in controversy by agreement of the parties;

(5) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(6) The need and schedule for filing briefs, and the date for any further conferences; and

(7) Such other matters that may aid in the disposition of the proceeding.

(b) Any party may request that a conference be held at any time after an initiating document has been filed.

(c) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(d) The failure of any attorney or party, following advance notice with an opportunity to be present, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(e) During a status conference, the Commission may issue oral rulings pertaining to a variety of matters relevant to the conduct of the proceeding including, inter alia, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the Commission.

§ 8.16 Confidentiality of proprietary information.

(a) Any materials filed in the course of a proceeding under this part may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in FOIA.

(b) Submissions containing information claimed to be proprietary under this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked ''Not for Public Inspection.'' An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited reply is submitted, and shall be served on the opposing parties.

(c) Except as provided in paragraph (d) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in the proceeding, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the proceeding and any support personnel employed by such attorneys;

(2) Officers or employees of the parties in the proceeding who are named by another party as being directly involved in the proceeding;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(d) The Commission will entertain, subject to a proper showing, a party's request to further restrict access to proprietary information as specified by the party. The other parties will have an opportunity to respond to such requests.

(e) The persons designated in paragraphs (c) and (d) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense of the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(f) No copies of materials marked proprietary may be made except copies

to be used by persons designated in paragraphs (c) and (d) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(g) Upon termination of the complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

§ 8.17 Review.

(a) *Interlocutory review.* (1) Except as provided below, no party may seek review of interlocutory rulings until a decision on the merits has been issued by the Commission's staff, including an administrative law judge.

(2) Rulings listed in this paragraph are reviewable as a matter of right. An application for review of such ruling may not be deferred and raised as an exception to a decision on the merits.

(i) If the staff's ruling denies or terminates the right of any person to participate as a party to the proceeding, such person, as a matter of right, may file an application for review of that ruling.

(ii) If the staff's ruling requires production of documents or other written evidence, over objection based on a claim of privilege, the ruling on the claim of privilege is reviewable as a matter of right.

(iii) If the staff's ruling denies a motion to disqualify a staff person from participating in the proceeding, the ruling is reviewable as a matter of right.

(b) *Petitions for reconsideration.* Petitions for reconsideration of interlocutory actions by the Commission's staff or by an administrative law judge will not be entertained. Petitions for reconsideration of a decision on the merits made by the Commission's staff should be filed in accordance with §§ 1.104 through 1.106 of this chapter.

(c) *Application for review.* (1) Any party to a part 8 proceeding aggrieved by any decision on the merits issued by the staff pursuant to delegated authority may file an application for review by the Commission in accordance with § 1.115 of this chapter.

(2) Any party to a part 8 proceeding aggrieved by any decision on the merits by an administrative law judge may file an appeal of the decision directly with the Commission, in accordance with §§ 1.276(a) and 1.277(a) through (c) of this chapter.

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